

SHOWING THE TEXT OF H.R. 5005
AS ORDERED REPORTED BY THE
SELECT COMMITTEE ON HOMELAND SECURITY

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Homeland Security Act of 2002”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. National Council of First Responders.

**TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE
PROTECTION**

**Subtitle A—Under Secretary for Information Analysis and Infrastructure
Protection**

Sec. 201. Under Secretary for Information Analysis and Infrastructure Protec-
tion.
Sec. 202. Functions transferred.
Sec. 203. Access to information.
Sec. 204. Procedures for sharing information.
Sec. 205. Privacy officer.
Sec. 206. Federal cybersecurity program.

Subtitle B—Intelligence Analysis Center

Sec. 211. Intelligence Analysis Center
Sec. 212. Mission of the Intelligence Analysis Center.



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TITLE III—SCIENCE AND TECHNOLOGY

- Sec. 301. Under Secretary for Science and Technology.
- Sec. 302. Functions transferred.
- Sec. 303. Conduct of certain public health-related activities.
- Sec. 304. Federally funded research and development center.
- Sec. 305. Miscellaneous provisions.
- Sec. 306. Homeland Security Science and Technology Coordination Council.
- Sec. 307. Conduct of research, development, demonstration, testing and evaluation.
- Sec. 308. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

- Sec. 401. Under Secretary for Border and Transportation Security.
- Sec. 402. Functions transferred.
- Sec. 403. Visa issuance.
- Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
- Sec. 405. Functions of Administrator of General Services.
- Sec. 406. Functions of Transportation Security Administration.
- Sec. 407. Preservation of Transportation Security Administration as a distinct entity.
- Sec. 408. Annual assessment of terrorist-related threats to public transportation.
- Sec. 409. Explosive detection systems.
- Sec. 410. Transportation security.

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—IMMIGRATION ENFORCEMENT

- Sec. 411. Transfer of functions to under Secretary for Border and Transportation Security.
- Sec. 412. Establishment of Bureau of Border Security.
- Sec. 413. Professional responsibility and quality review.
- Sec. 414. Employee discipline.
- Sec. 415. Report on improving enforcement functions.

CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

SUBCHAPTER A—TRANSFERS OF FUNCTIONS

- Sec. 421. Establishment of Bureau of Citizenship and Immigration Services.
- Sec. 422. Citizenship and Immigration Services Ombudsman.
- Sec. 423. Professional responsibility and quality review.
- Sec. 424. Employee discipline.
- Sec. 425. Office of Immigration Statistics within Bureau of Justice Statistics.
- Sec. 426. Preservation of Attorney General's authority.
- Sec. 427. Effective date.
- Sec. 428. Transition.

SUBCHAPTER B—OTHER PROVISIONS

- Sec. 431. Funding for citizenship and immigration services.



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- Sec. 432. Backlog elimination.
- Sec. 433. Report on improving immigration services.
- Sec. 434. Report on responding to fluctuating needs.
- Sec. 435. Application of Internet-based technologies.
- Sec. 436. Children's affairs.

CHAPTER 3—GENERAL PROVISIONS

- Sec. 441. Abolishment of INS.
- Sec. 442. Voluntary separation incentive payments.
- Sec. 443. Authority to conduct a demonstration project relating to disciplinary action.
- Sec. 444. Sense of Congress.
- Sec. 445. Reports and implementation plans.
- Sec. 446. Immigration functions.

Subtitle C—United States Customs Service

- Sec. 451. Establishment; Commissioner of Customs.
- Sec. 452. Retention of customs revenue functions by Secretary of the Treasury.
- Sec. 453. Establishment and implementation of cost accounting system; reports.
- Sec. 454. Preservation of Customs funds.
- Sec. 455. Separate budget request for Customs.
- Sec. 456. Payment of duties and fees.
- Sec. 457. Definition.
- Sec. 458. GAO report to Congress.
- Sec. 459. Allocation of resources by the Secretary.
- Sec. 460. Reports to Congress.
- Sec. 461. Customs user fees.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

- Sec. 501. Under Secretary for Emergency Preparedness and Response.
- Sec. 502. Functions transferred.
- Sec. 503. Nuclear incident response.
- Sec. 504. Definition.
- Sec. 505. Conduct of certain public-health related activities.

TITLE VI—MANAGEMENT

- Sec. 601. Under Secretary for Management.
- Sec. 602. Chief Financial Officer.
- Sec. 603. Chief Information Officer.
- Sec. 604. Establishment of Office for Civil Rights and Civil Liberties.

TITLE VII—MISCELLANEOUS

Subtitle A—Inspector General

- Sec. 701. Authority of the Secretary.

Subtitle B—United States Secret Service

- Sec. 711. Functions transferred.

Subtitle C—Critical Infrastructure Information

- Sec. 721. Short title.



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- Sec. 722. Definitions.
- Sec. 723. Designation of critical infrastructure protection program.
- Sec. 724. Protection of voluntarily shared critical infrastructure information.
- Sec. 725. No private right of action.

Subtitle D—Acquisitions

- Sec. 731. Research and development projects.
- Sec. 732. Personal services.
- Sec. 733. Special streamlined acquisition authority.
- Sec. 734. Procurements from small businesses.

Subtitle E—Property

- Sec. 741. Department headquarters.

Subtitle F—Support Anti-Terrorism by Fostering Effective Technologies Act
of 2002 (the SAFETY Act)

- Sec. 751. Short title.
- Sec. 752. Administration.
- Sec. 753. Litigation management.
- Sec. 754. Risk management.
- Sec. 755. Definitions.

Subtitle G—Other Provisions

- Sec. 761. Establishment of human resources management system.
- Sec. 762. Advisory committees.
- Sec. 763. Reorganization; transfer of appropriations.
- Sec. 764. Miscellaneous authorities.
- Sec. 765. Military activities.
- Sec. 766. Regulatory authority.
- Sec. 767. Provisions regarding transfers from Department of Energy.
- Sec. 768. Counternarcotics officer.
- Sec. 769. Office of International Affairs.
- Sec. 770. Prohibition of the terrorism information and prevention system.
- Sec. 771. Review of pay and benefit plans.
- Sec. 772. Role of the District of Columbia.
- Sec. 773. Transfer of the Federal Law Enforcement Training Center.

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

- Sec. 801. Definitions.
- Sec. 802. Reorganization plan.

Subtitle B—Transitional Provisions

- Sec. 811. Transitional authorities.
- Sec. 812. Savings provisions.
- Sec. 813. Terminations.
- Sec. 814. Incidental transfers.
- Sec. 815. National identification system not authorized.
- Sec. 816. Continuity of Inspector General oversight.
- Sec. 817. Reference.



TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

- Sec. 901. Inspector General Act of 1978.
- Sec. 902. Executive Schedule.
- Sec. 903. United States Secret Service.
- Sec. 904. Coast Guard.
- Sec. 905. Strategic National Stockpile and smallpox vaccine development.
- Sec. 906. Biological agent registration; Public Health Service Act.
- Sec. 907. Transfer of certain security and law enforcement functions and authorities.
- Sec. 908. Transportation security regulations.
- Sec. 909. Railroad security laws.
- Sec. 910. Office of Science and Technology Policy.
- Sec. 911. National Oceanographic Partnership Program.
- Sec. 912. Chief Financial Officer.
- Sec. 913. Chief Information Officer.

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

- Sec. 1001. National Homeland Security Council.
- Sec. 1002. Function.
- Sec. 1003. Membership.
- Sec. 1004. Other functions and activities.
- Sec. 1005. Homeland security budget.
- Sec. 1006. Staff composition.
- Sec. 1007. Relation to the National Security Council.

1 SEC. 2. DEFINITIONS.

2 In this Act, the following definitions apply:

3 (1) Each of the terms “American homeland”
4 and “homeland” means the United States.

5 (2) The term “appropriate congressional com-
6 mittee” means any committee of the House of Rep-
7 resentatives or the Senate having legislative or over-
8 sight jurisdiction under the Rules of the House of
9 Representatives or the Senate, respectively, over the
10 matter concerned.

11 (3) The term “assets” includes contracts, facili-
12 ties, property, records, unobligated or unexpended



1 balances of appropriations, and other funds or re-
2 sources (other than personnel).

3 (4) The term “critical infrastructure” has the
4 meaning given that term in section 1016(e) of Pub-
5 lic Law 107–56 (42 U.S.C. 5195c(e)).

6 (5) The term “Department” means the Depart-
7 ment of Homeland Security.

8 (6) The term “emergency response providers”
9 includes Federal, State, and local emergency public
10 safety, law enforcement, emergency response, emer-
11 gency medical (including hospital emergency facili-
12 ties), and related personnel, agencies, and authori-
13 ties.

14 (7) The term “executive agency” means an ex-
15 ecutive agency and a military department, as de-
16 fined, respectively, in sections 105 and 102 of title
17 5, United States Code.

18 (8) The term “functions” includes authorities,
19 powers, rights, privileges, immunities, programs,
20 projects, activities, duties, and responsibilities.

21 (9) The term “key resources” means publicly or
22 privately controlled resources essential to the mini-
23 mal operations of the economy and government.

24 (10) The term “local government” means—



1 (A) a county, municipality, city, town,
2 township, local public authority, school district,
3 special district, intrastate district, council of
4 governments (regardless of whether the council
5 of governments is incorporated as a nonprofit
6 corporation under State law), regional or inter-
7 state government entity, or agency or instru-
8 mentality of a local government;

9 (B) an Indian tribe or authorized tribal or-
10 ganization, or Alaska Native village or organi-
11 zation; and

12 (C) a rural community, unincorporated
13 town or village, or other public entity.

14 (11) The term “major disaster” has the mean-
15 ing given in section 102(2) of the Robert T. Stafford
16 Disaster Relief and Emergency Assistance Act (42
17 U.S.C. 5122).

18 (12) The term “personnel” means officers and
19 employees.

20 (13) The term “Secretary” means the Secretary
21 of Homeland Security.

22 (14) The term “State” means any State of the
23 United States, the District of Columbia, the Com-
24 monwealth of Puerto Rico, the Virgin Islands,
25 Guam, American Samoa, the Commonwealth of the



1 Northern Mariana Islands, and any possession of the
2 United States.

3 (15) The term “terrorism” means any activity
4 that—

5 (A) involves an act that—

6 (i) is dangerous to human life or po-
7 tentially destructive of critical infrastruc-
8 ture or key resources; and

9 (ii) is a violation of the criminal laws
10 of the United States or of any State or
11 other subdivision of the United States; and

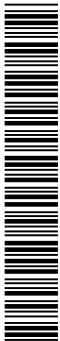
12 (B) appears to be intended—

13 (i) to intimidate or coerce a civilian
14 population;

15 (ii) to influence the policy of a govern-
16 ment by intimidation or coercion; or

17 (iii) to affect the conduct of a govern-
18 ment by mass destruction, assassination,
19 or kidnapping.

20 (16) The term “United States”, when used in
21 a geographic sense, means any State of the United
22 States, the District of Columbia, the Commonwealth
23 of Puerto Rico, the Virgin Islands, Guam, American
24 Samoa, the Commonwealth of the Northern Mariana
25 Islands, any possession of the United States, and



1 any waters within the jurisdiction of the United
2 States.

3 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

4 Any provision of this Act held to be invalid or unen-
5 forceable by its terms, or as applied to any person or cir-
6 cumstance, shall be construed so as to give it the max-
7 imum effect permitted by law, unless such holding shall
8 be one of utter invalidity or unenforceability, in which
9 event such provision shall be deemed severable from this
10 Act and shall not affect the remainder thereof, or the ap-
11 plication of such provision to other persons not similarly
12 situated or to other, dissimilar circumstances.

13 **SEC. 4. EFFECTIVE DATE.**

14 This Act shall take effect thirty days after the date
15 of enactment or, if enacted within thirty days before Janu-
16 ary 1, 2003, on January 1, 2003.

17 **TITLE I—DEPARTMENT OF**
18 **HOMELAND SECURITY**

19 **SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

20 (a) ESTABLISHMENT.—There is established a De-
21 partment of Homeland Security, as an executive depart-
22 ment of the United States within the meaning of title 5,
23 United States Code.

24 (b) MISSION.—



1 (1) IN GENERAL.—The primary mission of the
2 Department is to—

3 (A) prevent terrorist attacks within the
4 United States;

5 (B) reduce the vulnerability of the United
6 States to terrorism;

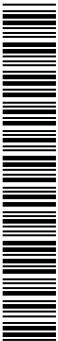
7 (C) minimize the damage, and assist in the
8 recovery, from terrorist attacks that do occur
9 within the United States;

10 (D) carry out all functions of entities
11 transferred to the Department, including by
12 acting as a focal point regarding natural and
13 manmade crises and emergency planning;

14 (E) ensure that the functions of the agen-
15 cies and subdivisions within the Department
16 that are not related directly to securing the
17 homeland are not diminished or neglected ex-
18 cept by a specific explicit Act of Congress; and

19 (F) ensure that the overall economic secu-
20 rity of the United States is not diminished by
21 efforts, activities, and programs aimed at secur-
22 ing the homeland.

23 (2) RESPONSIBILITY FOR INVESTIGATING AND
24 PROSECUTING TERRORISM.—Except as specifically
25 provided by law with respect to entities transferred



1 to the Department under this Act, primary responsi-
2 bility for investigating and prosecuting acts of ter-
3 rorism shall be vested not in the Department, but
4 rather in Federal, State, and local law enforcement
5 agencies with jurisdiction over the acts in question.

6 **SEC. 102. SECRETARY; FUNCTIONS.**

7 (a) SECRETARY.—(1) There is a Secretary of Home-
8 land Security, appointed by the President, by and with the
9 advice and consent of the Senate.

10 (2) The Secretary is the head of the Department and
11 shall have direction, authority, and control over it.

12 (3) All functions of all officers, employees, and orga-
13 nizational units of the Department are vested in the Sec-
14 retary.

15 (b) FUNCTIONS.—The Secretary—

16 (1) except as otherwise provided by this Act,
17 may delegate any of the Secretary's functions to any
18 officer, employee, or organizational unit of the De-
19 partment;

20 (2) shall have the authority to make contracts,
21 grants, and cooperative agreements, and to enter
22 into agreements with other executive agencies, as
23 may be necessary and proper to carry out the Sec-
24 retary's responsibilities under this Act or otherwise
25 provided by law; and



1 (3) shall take reasonable steps to ensure that
2 information systems and databases of the Depart-
3 ment are compatible with each other and with ap-
4 propriate databases of other Departments.

5 (c) COORDINATION WITH NON-FEDERAL ENTI-
6 TIES.—The Secretary shall coordinate (including the pro-
7 vision of training and equipment) with State and local gov-
8 ernment personnel, agencies, and authorities, with the pri-
9 vate sector, and with other entities, including by—

10 (1) coordinating with State and local govern-
11 ment personnel, agencies, and authorities, and with
12 the private sector, to ensure adequate planning,
13 equipment, training, and exercise activities;

14 (2) coordinating and, as appropriate, consoli-
15 dating, the Federal Government's communications
16 and systems of communications relating to homeland
17 security with State and local government personnel,
18 agencies, and authorities, the private sector, other
19 entities, and the public; and

20 (3) distributing or, as appropriate, coordinating
21 the distribution of, warnings and information to
22 State and local government personnel, agencies, and
23 authorities and to the public.

24 (d) MEETINGS OF NATIONAL SECURITY COUNCIL.—
25 The Secretary may, subject to the direction of the Presi-



1 dent, attend and participate in meetings of the National
2 Security Council.

3 (e) ISSUANCE OF REGULATIONS.—The issuance of
4 regulations by the Secretary shall be governed by the pro-
5 visions of chapter 5 of title 5, United States Code, except
6 as specifically provided in this Act, in laws granting regu-
7 latory authorities that are transferred by this Act, and in
8 laws enacted after the date of enactment of this Act.

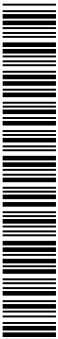
9 (f) SPECIAL ASSISTANT TO THE SECRETARY.—The
10 Secretary shall appoint a Special Assistant to the Sec-
11 retary who shall be responsible for—

12 (1) creating and fostering strategic communica-
13 tions with the private sector to enhance the primary
14 mission of the Department to protect the American
15 homeland;

16 (2) advising the Secretary on the impact of the
17 Department's policies, regulations, processes, and
18 actions on the private sector;

19 (3) interfacing with other relevant Federal
20 agencies with homeland security missions to assess
21 the impact of these agencies' actions on the private
22 sector;

23 (4) creating and managing private sector advi-
24 sory councils composed of representatives of indus-



1 tries and associations designated by the Secretary
2 to—

3 (A) advise the Secretary on private sector
4 products, applications, and solutions as they re-
5 late to homeland security challenges; and

6 (B) advise the Secretary on homeland se-
7 curity policies, regulations, processes, and ac-
8 tions that affect the participating industries
9 and associations;

10 (5) working with Federal laboratories, Federally
11 funded research and development centers, other Fed-
12 erally funded organizations, academia, and the pri-
13 vate sector to develop innovative approaches to ad-
14 dress homeland security challenges to produce and
15 deploy the best available technologies for homeland
16 security missions;

17 (6) promoting existing public-private partner-
18 ships and developing new public-private partnerships
19 to provide for collaboration and mutual support to
20 address homeland security challenges; and

21 (7) assisting in the development and promotion
22 of private sector best practices to secure critical in-
23 frastructure.

24 (g) STANDARDS POLICY.—All standards activities of
25 the Department shall be conducted in accordance with sec-



tion 12(d) of the National Technology Transfer Advance-
ment Act of 1995 (15 U.S.C. 272 note) and Office of
Management and Budget Circular A-119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—

There are the following officers, appointed by the Presi-
dent, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security,
who shall be the Secretary's first assistant for pur-
poses of subchapter III of chapter 33 of title 5,
United States Code.

(2) An Under Secretary for Information Anal-
ysis and Infrastructure Protection.

(3) An Under Secretary for Science and Tech-
nology.

(4) An Under Secretary for Border and Trans-
portation Security.

(5) An Under Secretary for Emergency Pre-
paredness and Response.

(6) An Under Secretary for Management.

(7) Not more than four Assistant Secretaries.

(8) A Chief Financial Officer.

(b) INSPECTOR GENERAL.—There is an Inspector
General, who shall be appointed as provided in section
3(a) of the Inspector General Act of 1978.



1 (c) COMMANDANT OF THE COAST GUARD.—To assist
2 the Secretary in the performance of the Secretary's func-
3 tions, there is a Commandant of the Coast Guard, who
4 shall be appointed as provided in section 44 of title 14,
5 United States Code, and who shall report directly to the
6 Secretary. In addition to such duties as may be provided
7 in this Act and as assigned to the Commandant by the
8 Secretary, the duties of the Commandant shall include
9 those required by section 2 of title 14, United States Code.

10 (d) OTHER OFFICERS.—To assist the Secretary in
11 the performance of the Secretary's functions, there are the
12 following officers, appointed by the President:

13 (1) A General Counsel, who shall be the chief
14 legal officer of the Department.

15 (2) Not more than eight Assistant Secretaries.

16 (3) A Director of the Secret Service.

17 (4) A Chief Information Officer.

18 (e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Sub-
19 ject to the provisions of this Act, every officer of the De-
20 partment shall perform the functions specified by law for
21 the official's office or prescribed by the Secretary.

22 **SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.**

23 (a) FINDINGS.—The Congress finds the following:

24 (1) First responders are key to protecting the
25 health and safety of our citizens against disasters.



1 (2) First responders are the Nation's ready re-
2 action force of dedicated and brave people who save
3 lives and property when catastrophe strikes.

4 (3) First responders have the knowledge, train-
5 ing, and experience to save lives, often under the
6 most difficult conditions imaginable.

7 (4) First responders play an important role in
8 helping to develop and implement advances in life
9 saving technology.

10 (5) First responders are uniquely qualified to
11 advise the Department of Homeland Security on the
12 role of first responders in defending our Nation
13 against terrorism.

14 (b) ESTABLISHMENT AND ADMINISTRATION.—

15 (1) There is established within the Department
16 of Homeland Security a National Council of First
17 Responders (in this section referred to as the
18 "Council").

19 (2) The President shall appoint the members of
20 the Council. The Council shall consist of not less
21 than 100 members, no more than 10 of whom may
22 be residents of the same State. Members of the
23 Council shall be selected from among the ranks of
24 police, firefighters, emergency medical technicians,
25 rescue workers, and hospital personnel who are em-



1 ployed in communities, tribal governments, and po-
2 litical subdivisions of various regions and population
3 sizes.

4 (3) The Director of Homeland Security shall
5 appoint a Chairman of the Council.

6 (4) Members shall be appointed to the Council
7 for a term of 3 years.

8 (5) Membership shall be staggered to provide
9 continuity.

10 (6) The Council shall meet no fewer than 2
11 times each year.

12 (7) Members of the Council shall receive no
13 compensation for service on the Council.

14 (8) The Secretary shall detail a single employee
15 from the Department of Homeland Security to the
16 Council for the purposes of:

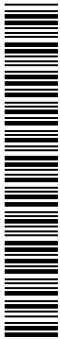
17 (A) Choosing meeting dates and locations.

18 (B) Coordinating travel.

19 (C) Other administrative functions as
20 needed.

21 (c) DUTIES.—The Council shall have the following
22 duties:

23 (1) Develop a plan to disseminate information
24 on first response best practices.



1 (2) Identify and educate the Secretary on the
2 latest technological advances in the field of first re-
3 sponse.

4 (3) Identify probable emerging threats to first
5 responders.

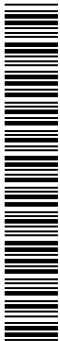
6 (4) Identify needed improvements to first re-
7 sponse techniques and training.

8 (5) Identify efficient means of communication
9 and coordination between first responders and local,
10 State, and Federal officials.

11 (6) Identify areas in which the Department can
12 assist first responders.

13 (7) Evaluate the adequacy and timeliness of re-
14 sources being made available to local first respond-
15 ers.

16 (d) REPORTING REQUIREMENT.—The Council shall
17 report to the Congress by October 1 of each year on how
18 first responders can continue to be most effectively used
19 to meet the ever-changing challenges of providing home-
20 land security for the United States.



1 **TITLE II—INFORMATION ANAL-**
2 **YSIS AND INFRASTRUCTURE**
3 **PROTECTION**

4 **Subtitle A—Under Secretary for In-**
5 **formation Analysis and Infra-**
6 **structure Protection**

7 **SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS**
8 **AND INFRASTRUCTURE PROTECTION.**

9 The Secretary, acting through the Under Secretary
10 for Information Analysis and Infrastructure Protection,
11 shall be responsible for the following:

12 (1) Conducting analysis of information, includ-
13 ing foreign intelligence and open source information,
14 lawfully collected by Federal, State and local law en-
15 forcement agencies and by elements of the intel-
16 ligence community with respect to threats of ter-
17 rorist acts against the United States.

18 (2) Integrating information, intelligence, and
19 intelligence analyses to produce and disseminate in-
20 frastructure vulnerability assessments with respect
21 to such threats.

22 (3) Identifying priorities for protective and sup-
23 port measures by the Department, by other execu-
24 tive agencies, by State and local governments, by the
25 private sector, and by other entities.



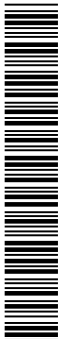
1 (4) Reviewing, analyzing, and recommending
2 improvements in law, policy, and procedure for the
3 sharing of intelligence and other information with
4 respect to threats against the United States within
5 the Federal Government and between the Federal
6 Government and State and local governments.

7 (5) Under the direction of the Secretary, devel-
8 oping a comprehensive national plan to provide for
9 the security of key resources and critical infrastruc-
10 tures.

11 (6) Coordinating with other executive agencies,
12 State and local government personnel, agencies, and
13 authorities, and the private sector, to provide advice
14 on implementation of such comprehensive national
15 plan.

16 (7) Supporting the intelligence and information
17 requirements of the Department.

18 (8) Administering the Homeland Security Advi-
19 sory System, exercising primary responsibility for
20 public advisories relating to terrorist threats, and (in
21 coordination with other executive agencies) providing
22 specific warning information to State and local gov-
23 ernment personnel, agencies, and authorities, the
24 private sector, other entities, and the public, as well



1 as advice about appropriate protective actions and
2 countermeasures.

3 **SEC. 202. FUNCTIONS TRANSFERRED.**

4 In accordance with title VIII, there shall be trans-
5 ferred to the Secretary the functions, personnel, assets,
6 and obligations of the following:

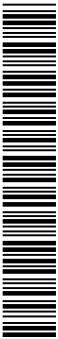
7 (1) The National Infrastructure Protection
8 Center of the Federal Bureau of Investigation (other
9 than the Computer Investigations and Operations
10 Section), including the functions of the Attorney
11 General relating thereto.

12 (2) The National Communications System of
13 the Department of Defense, including the functions
14 of the Secretary of Defense relating thereto.

15 (3) The Critical Infrastructure Assurance Of-
16 fice of the Department of Commerce, including the
17 functions of the Secretary of Commerce relating
18 thereto.

19 (4) The Energy Security and Assurance Pro-
20 gram of the Department of Energy, including the
21 National Infrastructure Simulation and Analysis
22 Center and the functions of the Secretary of Energy
23 relating thereto.

24 (5) The Federal Computer Incident Response
25 Center of the General Services Administration, in-



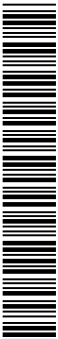
1 including the functions of the Administrator of Gen-
2 eral Services relating thereto.

3 **SEC. 203. ACCESS TO INFORMATION.**

4 The Secretary shall have access to all reports, assess-
5 ments, and analytical information relating to threats of
6 terrorism in the United States and to other areas of re-
7 sponsibility described in section 101(b), and to all infor-
8 mation concerning infrastructure or other vulnerabilities
9 of the United States to terrorism, whether or not such
10 information has been analyzed, that may be collected, pos-
11 sessed, or prepared by any executive agency, except as oth-
12 erwise directed by the President. The Secretary shall also
13 have access to other information relating to the foregoing
14 matters that may be collected, possessed, or prepared by
15 an executive agency, as the President may further provide.
16 With respect to the material to which the Secretary has
17 access under this section—

18 (1) the Secretary may obtain such material by
19 request, and may enter into cooperative arrange-
20 ments with other executive agencies to share such
21 material on a regular or routine basis, including re-
22 quests or arrangements involving broad categories of
23 material;

24 (2) regardless of whether the Secretary has
25 made any request or entered into any cooperative ar-



1 rangement pursuant to paragraph (1), all executive
2 agencies promptly shall provide to the Secretary—

3 (A) all reports, assessments, and analytical
4 information relating to threats of terrorism in
5 the United States and to other areas of respon-
6 sibility described in section 101(b);

7 (B) all information concerning infrastruc-
8 ture or other vulnerabilities of the United
9 States to terrorism, whether or not such infor-
10 mation has been analyzed;

11 (C) all information relating to significant
12 and credible threats of terrorism in the United
13 States, whether or not such information has
14 been analyzed, if the President has provided
15 that the Secretary shall have access to such in-
16 formation; and

17 (D) such other material as the President
18 may further provide;

19 (3) the Secretary shall have full access and
20 input with respect to information from any national
21 collaborative information analysis capability (as re-
22 ferred to in section 924 of the National Defense Au-
23 thorization Act for Fiscal Year 2002 (Public Law
24 107–107; 115 Stat. 1199)) established jointly by the



1 Secretary of Defense and the Director of Central In-
2 telligence; and

3 (4) the Secretary shall ensure that any material
4 received pursuant to this section is protected from
5 unauthorized disclosure and handled and used only
6 for the performance of official duties, and that any
7 intelligence information shared under this section
8 shall be transmitted, retained, and disseminated con-
9 sistent with the authority of the Director of Central
10 Intelligence to protect intelligence sources and meth-
11 ods under the National Security Act and related pro-
12 cedures or, as appropriate, similar authorities of the
13 Attorney General concerning sensitive law enforce-
14 ment information.

15 **SEC. 204. PROCEDURES FOR SHARING INFORMATION.**

16 The Secretary shall establish procedures on the use
17 of information shared under this title that—

18 (1) limit the redissemination of such informa-
19 tion to ensure that it is not used for an unauthor-
20 ized purpose;

21 (2) ensure the security and confidentiality of
22 such information;

23 (3) protect the constitutional and statutory
24 rights of any individuals who are subjects of such in-
25 formation; and



1 (4) provide data integrity through the timely re-
2 moval and destruction of obsolete or erroneous
3 names and information.

4 **SEC. 205. PRIVACY OFFICER.**

5 The Secretary shall appoint a senior official in the
6 Department to assume primary responsibility for privacy
7 policy, including—

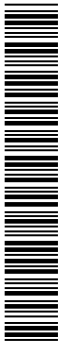
8 (1) assuring that the use of information tech-
9 nologies sustain, and do not erode, privacy protec-
10 tions relating to the use, collection, and disclosure of
11 personal information;

12 (2) assuring that personal information con-
13 tained in Privacy Act systems of records is handled
14 in full compliance with fair information practices as
15 set out in the Privacy Act of 1974;

16 (3) evaluating legislative proposals involving
17 collection, use, and disclosure of personal informa-
18 tion by the Federal Government;

19 (4) conducting a privacy impact assessment of
20 proposed rules of the Department or that of the De-
21 partment on the privacy of personal information, in-
22 cluding the type of personal information collected
23 and the number of people affected; and

24 (5) preparing a report to Congress on an an-
25 nual basis on activities of the Department that af-



1 fect privacy, including complaints of privacy viola-
2 tions, implementation of the Privacy Act of 1974, in-
3 ternal controls, and other matters.

4 **SEC. 206. FEDERAL CYBERSECURITY PROGRAM.**

5 (a) IN GENERAL.—The Secretary, acting through the
6 Under Secretary for Information Analysis and Infrastruc-
7 ture Protection, shall establish and manage a program to
8 improve the security of Federal critical information sys-
9 tems, including carrying out responsibilities under para-
10 graphs (1) and (2) of section 201 that relate to such sys-
11 tems.

12 (b) DUTIES.—The duties of the Secretary under sub-
13 section (a) are—

14 (1) to evaluate the increased use by civilian ex-
15 ecutive agencies of techniques and tools to enhance
16 the security of Federal critical information systems,
17 including, as appropriate, consideration of cryptog-
18 raphy;

19 (2) to provide assistance to civilian executive
20 agencies in protecting the security of Federal critical
21 information systems, including identification of sig-
22 nificant risks to such systems; and

23 (3) to coordinate research and development for
24 critical information systems relating to supervisory



1 control and data acquisition systems, including, as
2 appropriate, the establishment of a test bed.

3 (c) FEDERAL INFORMATION SYSTEM SECURITY
4 TEAM.—

5 (1) IN GENERAL.—In carrying out subsection
6 (b)(2), the Secretary shall establish, manage, and
7 support a Federal information system security team
8 whose purpose is to provide technical expertise to ci-
9 vilian executive agencies to assist such agencies in
10 securing Federal critical information systems by con-
11 ducting information security audits of such systems,
12 including conducting tests of the effectiveness of in-
13 formation security control techniques and per-
14 forming logical access control tests of interconnected
15 computer systems and networks, and related vulner-
16 ability assessment techniques.

17 (2) TEAM MEMBERS.—The Secretary shall en-
18 sure that the team under paragraph (1) includes
19 technical experts and auditors, computer scientists,
20 and computer forensics analysts whose technical
21 competence enables the team to conduct audits
22 under such paragraph.

23 (3) AGENCY AGREEMENTS REGARDING AU-
24 DITS.—Each civilian executive agency may enter into
25 an agreement with the team under paragraph (1) for



1 the conduct of audits under such paragraph of the
2 Federal critical information systems of the agency.
3 Such agreement shall establish the terms of the
4 audit and shall include provisions to minimize the
5 extent to which the audit disrupts the operations of
6 the agency.

7 (4) REPORTS.—Promptly after completing an
8 audit under paragraph (1) of a civilian executive
9 agency, the team under such paragraph shall pre-
10 pare a report summarizing the findings of the audit
11 and making recommendations for corrective action.
12 Such report shall be submitted to the Secretary, the
13 head of such agency, and the Inspector General of
14 the agency (if any), and upon request of any con-
15 gressional committee with jurisdiction over such
16 agency, to such committee.

17 (d) DEFINITION.—For purposes of this section, the
18 term “Federal critical information system” means an “in-
19 formation system” as defined in section 3502 of title 44,
20 United States Code, that—

21 (1) is, or is a component of, a key resource or
22 critical infrastructure;

23 (2) is used or operated by a civilian executive
24 agency or by a contractor of such an agency; and



1 (3) does not include any national security sys-
2 tem as defined in section 5142 of the Clinger-Cohen
3 Act of 1996.

4 **Subtitle B—Intelligence Analysis**
5 **Center**

6 **SEC. 211. INTELLIGENCE ANALYSIS CENTER.**

7 (a) ESTABLISHMENT; NFIP AGENCY.—(1) There is
8 established within the Department the Intelligence Anal-
9 ysis Center. The Under Secretary for Information Anal-
10 ysis and Infrastructure Protection shall be the head of the
11 Intelligence Analysis Center.

12 (2) The Intelligence Analysis Center is a program of
13 the intelligence community for purposes of the National
14 Foreign Intelligence Program (as defined in section 3(6)
15 of the National Security Act of 1947 (50 U.S.C.
16 401a(6))).

17 (b) FUNCTIONS.—The Under Secretary for Informa-
18 tion Analysis and Infrastructure Protection, through the
19 Intelligence Analysis Center, shall carry out the duties
20 specified in paragraphs (1), (2), (3), (6), and (7) of section
21 201(b).

22 (c) DETAIL OF CERTAIN PERSONNEL.—

23 (1) IN GENERAL.—The Secretary and the Di-
24 rector of Central Intelligence, the Secretary of De-
25 fense, the Attorney General, the Secretary of State,



1 or the head of another agency or department as the
2 case may be, shall enter into cooperative arrange-
3 ments to provide for an appropriate number of indi-
4 viduals to be detailed to the Under Secretary to per-
5 form analytical functions and duties with respect to
6 the mission of the Department from the following
7 agencies:

8 (A) The Central Intelligence Agency.

9 (B) The Federal Bureau of Investigation.

10 (C) The National Security Agency.

11 (D) The National Imagery and Mapping
12 Agency.

13 (E) The Department of State.

14 (F) The Defense Intelligence Agency.

15 (G) Any other agency or department that
16 the President determines appropriate.

17 (2) TERMS OF DETAIL.—Any officer or em-
18 ployee of the United States or a member of the
19 Armed Forces who is detailed to the Under Sec-
20 retary under paragraph (1) shall be detailed on a re-
21 imburseable basis for a period of less than two years
22 for the performance of temporary functions as re-
23 quired by the Under Secretary.

24 (d) INCLUSION OF OFFICE OF INTELLIGENCE AS AN
25 ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section



1 3(4) of the National Security Act of 1947 (50 U.S.C.
2 401a(4)) is amended—

3 (1) by striking “and” at the end of subpara-
4 graph (I);

5 (2) by redesignating subparagraph (J) as sub-
6 paragraph (K); and

7 (3) by inserting after subparagraph (I) the fol-
8 lowing new subparagraph:

9 “(J) the Intelligence Analysis Center of the
10 Department of Homeland Security; and”.

11 **SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CEN-**
12 **TER.**

13 (a) IN GENERAL.—The mission of the Intelligence
14 Analysis Center is as follows:

15 (1) ANALYSIS AND PRODUCTION.—

16 (A) Correlating and evaluating information
17 and intelligence related to the mission of the
18 Department collected from all sources available.

19 (B) Producing all-source collaborative in-
20 telligence analysis, warnings, tactical assess-
21 ments, and strategic assessments of the ter-
22 rorist threat and infrastructure vulnerabilities
23 of the United States.

24 (C) Providing appropriate dissemination of
25 such assessments.



1 (D) Improving the lines of communication
2 with respect to homeland security between the
3 Federal Government and State and local public
4 safety agencies and the private sector through
5 the timely dissemination of information per-
6 taining to threats of acts of terrorism against
7 the United States.

8 (2) COORDINATION OF INFORMATION.—Coordi-
9 nating with elements of the intelligence community
10 and with Federal, State, and local law enforcement
11 agencies, and the private sector as appropriate.

12 (3) ADDITIONAL DUTIES.—Performing such
13 other functions as the Secretary may direct.

14 (b) STRATEGIC AND TACTICAL MISSIONS OF THE IN-
15 TELLIGENCE ANALYSIS CENTER.—The Under Secretary
16 shall conduct strategic and tactical assessments and warn-
17 ings through the Intelligence Analysis Center, including
18 research, analysis, and the production of assessments on
19 the following as they relate to the mission of the Depart-
20 ment:

- 21 (1) Domestic terrorism.
22 (2) International terrorism.
23 (3) Counterintelligence.
24 (4) Transnational crime.



1 (5) Proliferation of weapons of mass destruc-
2 tion.

3 (6) Illicit financing of terrorist activities.

4 (7) Cybersecurity and cybercrime.

5 (8) Key resources and critical infrastructures.

6 (c) STAFFING OF THE INTELLIGENCE ANALYSIS
7 CENTER.—

8 (1) FUNCTIONS TRANSFERRED.—In accordance
9 with title VIII, for purposes of carrying out this
10 title, there is transferred to the Under Secretary the
11 functions, personnel, assets, and liabilities of the fol-
12 lowing entities:

13 (A) The National Infrastructure Protection
14 Center of the Federal Bureau of Investigation
15 (other than the Computer Investigations and
16 Operations Section).

17 (B) The Critical Infrastructure Assurance
18 Office of the Department of Commerce.

19 (C) The Federal Computer Incident Re-
20 sponse Center of the General Services Adminis-
21 tration.

22 (D) The National Infrastructure Simula-
23 tion and Analysis Center of the Department of
24 Energy.



1 (E) The National Communications System
2 of the Department of Defense.

3 (F) The intelligence element of the Coast
4 Guard.

5 (G) The intelligence element of the United
6 States Customs Service.

7 (H) The intelligence element of the Immi-
8 gration and Naturalization Service.

9 (I) The intelligence element of the Trans-
10 portation Security Administration.

11 (J) The intelligence element of the Federal
12 Protective Service.

13 (2) STRUCTURE.—It is the sense of Congress
14 that the Under Secretary should model the Intel-
15 ligence Analysis Center on the technical, analytic ap-
16 proach of the Information Dominance Center of the
17 Department of the Army to the maximum extent
18 feasible and appropriate.

19 **TITLE III—SCIENCE AND**
20 **TECHNOLOGY**

21 **SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECH-**
22 **NOLOGY.**

23 The Secretary, acting through the Under Secretary
24 for Science and Technology, shall have responsibility for—



1 (1) developing, in consultation with other ap-
2 propriate executive agencies, a national policy and
3 strategic plan for, identifying priorities, goals, objec-
4 tives and policies for, and coordinating the Federal
5 Government's civilian efforts to identify and develop
6 countermeasures to chemical, biological radiological,
7 nuclear and other emerging terrorist threats, includ-
8 ing the development of comprehensive, research-
9 based definable goals for such efforts and develop-
10 ment of annual measurable objectives and specific
11 targets to accomplish and evaluate the goals for
12 such efforts;

13 (2) establishing and administering the primary
14 research and development activities of the Depart-
15 ment, including the long-term research and develop-
16 ment needs and capabilities for all elements of the
17 Department;

18 (3) conducting basic and applied research, de-
19 velopment, demonstration, testing, and evaluation
20 activities that are relevant to any or all elements of
21 the Department, through both intramural and extra-
22 mural programs; provided that such responsibility
23 does not extend to human health-related research
24 and development activities;



1 (4) coordinating and integrating all research,
2 development, demonstration, testing, and evaluation
3 activities of the Department;

4 (5) coordinating with other appropriate execu-
5 tive agencies in developing and carrying out the
6 science and technology agenda of the Department to
7 reduce duplication and identify unmet needs;

8 (6) establishing Federal priorities for research,
9 development, demonstration, testing, and, as appro-
10 priate, procurement and transitional operation of
11 technology and systems—

12 (A) for preventing the importation of
13 chemical, biological, radiological, and nuclear
14 weapons and related materials;

15 (B) for detecting, preventing, and pro-
16 tecting against terrorist attacks that involve
17 such weapons or related materials; and

18 (C) for interoperability of communications
19 systems for emergency response providers;

20 (7) ensuring that the research, development,
21 demonstration, testing, and evaluation activities of
22 the Department are aligned with the Department's
23 procurement needs;

24 (8) facilitating the deployment of technology
25 that will serve to enhance homeland security, includ-



1 ing through the establishment of a centralized Fed-
2 eral repository for information relating to tech-
3 nologies described in subparagraphs (A), (B), and
4 (C) of paragraph (6) for dissemination to Federal,
5 State, and local government and private sector enti-
6 ties, and for information for persons seeking guid-
7 ance on how to pursue proposals to develop or de-
8 ploy technologies that would contribute to homeland
9 security;

10 (9) providing guidance, recommendations, and
11 technical assistance as appropriate to assist Federal,
12 State, and local government and private sector ef-
13 forts to evaluate and implement the use of tech-
14 nologies described in subparagraphs (A), (B), and
15 (C) of paragraph (6); and

16 (10) developing and overseeing the administra-
17 tion of guidelines for merit review of research and
18 development projects throughout the Department,
19 and for the dissemination of research conducted or
20 sponsored by the Department.

21 **SEC. 302. FUNCTIONS TRANSFERRED.**

22 In accordance with title VIII, there shall be trans-
23 ferred to the Secretary the functions, personnel, assets,
24 and obligations of the following:

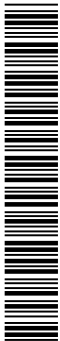


1 (1) The program under section 351A of the
2 Public Health Service Act, and functions thereof, in-
3 cluding the functions of the Secretary of Health and
4 Human Services relating thereto, subject to the
5 amendments made by section 906(a)(3), except that
6 such transfer shall not occur unless the program
7 under section 212 of the Agricultural Bioterrorism
8 Protection Act of 2002 (subtitle B of title II of Pub-
9 lic Law 107-188), and functions thereof, including
10 the functions of the Secretary of Agriculture relating
11 thereto, is transferred to the Department.

12 (2) Programs and activities of the Department
13 of Energy, including the functions of the Secretary
14 of Energy relating thereto (but not including pro-
15 grams and activities relating to the strategic nuclear
16 defense posture of the United States), as follows:

17 (A) The programs and activities relating to
18 chemical and biological national security, and
19 supporting programs and activities directly re-
20 lated to homeland security, of the non-prolifera-
21 tion and verification research and development
22 program.

23 (B) The programs and activities relating to
24 nuclear smuggling, and other programs and ac-
25 tivities directly related to homeland security,



1 within the proliferation detection program of
2 the non-proliferation and verification research
3 and development program.

4 (C) Those aspects of the nuclear assess-
5 ment program of the international materials
6 protection and cooperation program that are di-
7 rectly related to homeland security.

8 (D) Such life sciences activities of the bio-
9 logical and environmental research program re-
10 lated to microbial pathogens as may be des-
11 ignated by the President for transfer to the De-
12 partment and that are directly related to home-
13 land security.

14 (E) The Environmental Measurements
15 Laboratory.

16 (F) The advanced scientific computing re-
17 search program and activities at Lawrence
18 Livermore National Laboratory.

19 (3) The homeland security projects within the
20 Chemical Biological Defense Program of the Depart-
21 ment of Defense known as the Biological Defense
22 Homeland Security Support Program and the Bio-
23 logical Counter-Terrorism Research Program.

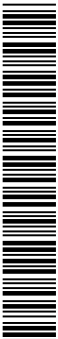


1 **SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
2 **ACTIVITIES.**

3 With respect to civilian human health-related re-
4 search and development activities relating to counter-
5 measures for chemical, biological, radiological, and nuclear
6 and other emerging terrorist threats carried out by the
7 Department of Health and Human Services (including the
8 Public Health Service), the Secretary of Health and
9 Human Services shall set priorities, goals, objectives, and
10 policies and develop a coordinated strategy for such activi-
11 ties in collaboration with the Secretary of Homeland Secu-
12 rity to ensure consistency with the national policy and
13 strategic plan developed pursuant to section 301(1).

14 **SEC. 304. FEDERALLY FUNDED RESEARCH AND DEVELOP-**
15 **MENT CENTER.**

16 The Secretary, acting through the Under Secretary
17 for Science and Technology, shall have the authority to
18 establish or contract with one or more federally funded
19 research and development centers to provide independent
20 analysis of homeland security issues, or to carry out other
21 responsibilities under this Act, including coordinating and
22 integrating both the extramural and intramural programs
23 described in section 307.



1 **SEC. 305. MISCELLANEOUS PROVISIONS.**

2 (a) CLASSIFICATION.—To the greatest extent prac-
3 ticable, research conducted or supported by the Depart-
4 ment shall be unclassified.

5 (b) CONSTRUCTION.—Nothing in this title shall be
6 construed to preclude any Under Secretary of the Depart-
7 ment from carrying out research, development, demonstra-
8 tion, or deployment activities, as long as such activities
9 are coordinated through the Under Secretary for Science
10 and Technology.

11 (c) REGULATIONS.—The Secretary, acting through
12 the Under Secretary for Science and Technology, may
13 issue necessary regulations with respect to research, devel-
14 opment, demonstration, testing, and evaluation activities
15 of the Department, including the conducting, funding, and
16 reviewing of such activities.

17 (d) NOTIFICATION OF PRESIDENTIAL LIFE
18 SCIENCES DESIGNATIONS.—Not later than 60 days before
19 effecting any transfer of Department of Energy life
20 sciences activities pursuant to section 302(2)(D) of this
21 Act, the President shall notify the Congress of the pro-
22 posed transfer and shall include the reasons for the trans-
23 fer and a description of the effect of the transfer on the
24 activities of the Department of Energy.



1 **SEC. 306. HOMELAND SECURITY SCIENCE AND TECH-**
2 **NOLOGY COORDINATION COUNCIL.**

3 (a) ESTABLISHMENT AND COMPOSITION.—There is
4 established within the Department a Homeland Security
5 Science and Technology Coordination Council (in this sec-
6 tion referred to as the “Coordination Council”). The Co-
7 ordination Council shall be composed of all the Under Sec-
8 retaries of the Department and any other Department of-
9 ficials designated by the Secretary, and shall be chaired
10 by the Under Secretary for Science and Technology. The
11 Coordination Council shall meet at the call of the chair.

12 (b) RESPONSIBILITIES.—The Coordination Council
13 shall—

14 (1) establish priorities for research, develop-
15 ment, demonstration, testing, and evaluation activi-
16 ties conducted or supported by the Department;

17 (2) ensure that the priorities established under
18 paragraph (1) reflect the acquisition needs of the
19 Department; and

20 (3) assist the Under Secretary for Science and
21 Technology in carrying out his responsibilities under
22 section 301(4).

23 **SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEM-**
24 **ONSTRATION, TESTING AND EVALUATION.**

25 (a) IN GENERAL.—The Secretary, acting through the
26 Under Secretary for Science and Technology, shall carry



1 out the responsibilities under section 301(3) through both
2 extramural and intramural programs.

3 (b) EXTRAMURAL PROGRAMS.—(1) The Secretary,
4 acting through the Under Secretary for Science and Tech-
5 nology, shall operate extramural research, development,
6 demonstration, testing, and evaluation programs so as
7 to—

8 (A) ensure that colleges, universities, private re-
9 search institutes, and companies (and consortia
10 thereof) from as many areas of the United States as
11 practicable participate; and

12 (B) distribute funds through grants, cooperative
13 agreements, and contracts through competitions that
14 are as open as possible.

15 (2)(A) The Secretary, acting through the Under Sec-
16 retary for Science and Technology, shall establish within
17 1 year of the date of enactment of this Act a university-
18 based center or centers for homeland security. The pur-
19 pose of this center or centers shall be to establish a coordi-
20 nated, university-based system to enhance the Nation's
21 homeland security.

22 (B) In selecting colleges or universities as centers for
23 homeland security, the Secretary shall consider the fol-
24 lowing criteria:



1 (i) Demonstrated expertise in the training of
2 first responders.

3 (ii) Demonstrated expertise in responding to in-
4 cidents involving weapons of mass destruction and
5 biological warfare.

6 (iii) Demonstrated expertise in emergency med-
7 ical services.

8 (iv) Demonstrated expertise in chemical, bio-
9 logical, radiological, and nuclear countermeasures.

10 (v) Strong affiliations with animal and plant di-
11 agnostic laboratories.

12 (vi) Demonstrated expertise in food safety.

13 (vii) Affiliation with Department of Agriculture
14 laboratories or training centers.

15 (viii) Demonstrated expertise in water and
16 wastewater operations.

17 (ix) Demonstrated expertise in port and water-
18 way security.

19 (x) Demonstrated expertise in multi-modal
20 transportation.

21 (xi) Nationally recognized programs in informa-
22 tion security.

23 (xii) Nationally recognized programs in engi-
24 neering.



1 (xiii) Demonstrated expertise in educational
2 outreach and technical assistance.

3 (xiv) Demonstrated expertise in border trans-
4 portation and security.

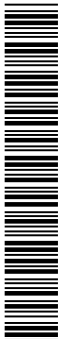
5 (xv) Demonstrated expertise in interdisciplinary
6 public policy research and communication outreach
7 regarding science, technology, and public policy.

8 (C) The Secretary shall have the discretion to estab-
9 lish such centers and to consider additional criteria as nec-
10 essary to meet the evolving needs of homeland security
11 and shall report to Congress concerning the implementa-
12 tion of this paragraph as necessary.

13 (D) There are authorized to be appropriated such
14 sums as may be necessary to carry out this paragraph.

15 (c) INTRAMURAL PROGRAMS.—(1) In carrying out
16 the duties under section 301, the Secretary, acting
17 through the Under Secretary for Science and Technology,
18 may draw upon the expertise of any laboratory of the Fed-
19 eral Government, whether operated by a contractor or the
20 Government.

21 (2) The Secretary, acting through the Under Sec-
22 retary for Science and Technology, may establish a head-
23 quarters laboratory for the Department at any national
24 laboratory and may establish additional laboratory units
25 at other national laboratories.



1 (3) If the Secretary chooses to establish a head-
2 quarters laboratory pursuant to paragraph (2), then the
3 Secretary shall do the following:

4 (A) Establish criteria for the selection of the
5 headquarters laboratory in consultation with the Na-
6 tional Academy of Sciences, appropriate Federal
7 agencies, and other experts.

8 (B) Publish the criteria in the Federal Register.

9 (C) Evaluate all appropriate national labora-
10 tories against the criteria.

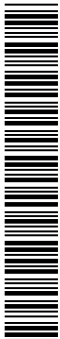
11 (D) Select a national laboratory on the basis of
12 the criteria.

13 (E) Report to the appropriate congressional
14 committees on which laboratory was selected, how
15 the selected laboratory meets the published criteria,
16 and what duties the headquarters laboratory shall
17 perform.

18 (4) No laboratory shall begin operating as the head-
19 quarters laboratory of the Department until at least 30
20 days after the transmittal of the report required by para-
21 graph (3)(E).

22 **SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE**
23 **CENTER, DEPARTMENT OF AGRICULTURE.**

24 (a) **TRANSFER REQUIRED.**—In accordance with title
25 VIII, the Secretary of Agriculture shall transfer to the



1 Secretary of Homeland Security the Plum Island Animal
2 Disease Center of the Department of Agriculture, includ-
3 ing the assets and liabilities of the Center.

4 (b) CONTINUED DEPARTMENT OF AGRICULTURE AC-
5 CESS.—Upon the transfer of the Plum Island Animal Dis-
6 ease Center, the Secretary of Homeland Security and the
7 Secretary of Agriculture shall enter into an agreement to
8 ensure Department of Agriculture access to the center for
9 research, diagnostic, and other activities of the Depart-
10 ment of Agriculture.

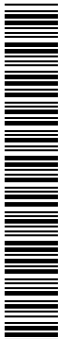
11 (c) NOTIFICATION.—At least 180 days before any
12 change in the biosafety level at the facility described in
13 subsection (a), the President shall notify the Congress of
14 the change and describe the reasons therefor. No such
15 change may be made until at least 180 days after the com-
16 pletion of the transition period defined in section 801(2).

17 **TITLE IV—BORDER AND**
18 **TRANSPORTATION SECURITY**

19 **Subtitle A—General Provisions**

20 **SEC. 401. UNDER SECRETARY FOR BORDER AND TRANS-**
21 **PORTATION SECURITY.**

22 The Secretary, acting through the Under Secretary
23 for Border and Transportation Security, shall be respon-
24 sible for the following:



1 (1) Preventing the entry of terrorists and the
2 instruments of terrorism into the United States.

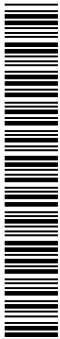
3 (2) Securing the borders, territorial waters,
4 ports, terminals, waterways, and air, land, and sea
5 transportation systems of the United States, includ-
6 ing managing and coordinating governmental activi-
7 ties at ports of entry.

8 (3) Carrying out the immigration enforcement
9 functions vested by statute in, or performed by, the
10 Commissioner of Immigration and Naturalization (or
11 any officer, employee, or component of the Immigra-
12 tion and Naturalization Service) immediately before
13 the date on which the transfer of functions specified
14 under section 411 takes effect.

15 (4) Establishing and administering rules, in ac-
16 cordance with section 403, governing the granting of
17 visas or other forms of permission, including parole,
18 to enter the United States to individuals who are not
19 a citizen or an alien lawfully admitted for permanent
20 residence in the United States.

21 (5) Except as provided in subtitle C, admin-
22 istering the customs laws of the United States.

23 (6) Conducting the inspection and related ad-
24 ministrative functions of the Department of Agri-



1 culture transferred to the Secretary of Homeland
2 Security under section 404.

3 (7) In carrying out the foregoing responsibil-
4 ities, ensuring the speedy, orderly, and efficient flow
5 of lawful traffic and commerce.

6 **SEC. 402. FUNCTIONS TRANSFERRED.**

7 In accordance with title VIII, there shall be trans-
8 ferred to the Secretary the functions, personnel, assets,
9 and obligations of the following:

10 (1) The United States Customs Service, except
11 as provided in subtitle C.

12 (2) The Coast Guard of the Department of
13 Transportation, which shall be maintained as a dis-
14 tinct entity within the Department, including the
15 functions of the Secretary of Transportation relating
16 thereto.

17 (3) The Transportation Security Administration
18 of the Department of Transportation, including the
19 functions of the Secretary of Transportation, and of
20 the Under Secretary of Transportation for Security,
21 relating thereto.

22 (4) The Federal Protective Service of the Gen-
23 eral Services Administration, including the functions
24 of the Administrator of General Services relating
25 thereto.



1 (5) The Office of National Preparedness of the
2 Federal Emergency Management Agency, including
3 the functions of the Director of the Federal Emer-
4 gency Management Agency relating thereto.

5 (6) The Office for Domestic Preparedness of
6 the Office of Justice Programs of the Department of
7 Justice, including the functions of the Attorney Gen-
8 eral relating thereto.

9 (7) The National Domestic Preparedness Office
10 of the Federal Bureau of Investigation, including the
11 functions of the Attorney General relating thereto.

12 (8) The Domestic Emergency Support Teams
13 of the Department of Justice, including the func-
14 tions of the Attorney General relating thereto.

15 **SEC. 403. VISA ISSUANCE.**

16 (a) IN GENERAL.—Notwithstanding section 104(a)
17 of the Immigration and Nationality Act (8 U.S.C.
18 1104(a)) or any other provision of law, and except as pro-
19 vided in subsection (b) of this section, the Secretary—

20 (1) shall be vested exclusively with all authori-
21 ties to issue regulations with respect to, administer,
22 and enforce the provisions of such Act, and of all
23 other immigration and nationality laws, relating to
24 the functions of consular officers of the United
25 States in connection with the granting or refusal of



1 visas, and shall have the authority to refuse visas in
2 accordance with law and to develop programs of
3 homeland security training for consular officers (in
4 addition to consular training provided by the Sec-
5 retary of State), which authorities shall be exercised
6 through the Secretary of State, except that the Sec-
7 retary shall not have authority to alter or reverse the
8 decision of a consular officer to refuse a visa to an
9 alien; and

10 (2) shall have authority to confer or impose
11 upon any officer or employee of the United States,
12 with the consent of the head of the executive agency
13 under whose jurisdiction such officer or employee is
14 serving, any of the functions specified in paragraph
15 (1).

16 (b) AUTHORITY OF THE SECRETARY OF STATE.—

17 (1) IN GENERAL.—Notwithstanding subsection
18 (a), the Secretary of State may direct a consular of-
19 ficer to refuse a visa to an alien if the Secretary of
20 State deems such refusal necessary or advisable in
21 the foreign policy or security interests of the United
22 States.

23 (2) CONSTRUCTION REGARDING AUTHORITY.—
24 Nothing in this section shall be construed as affect-



1 ing the authorities of the Secretary of State under
2 the following provisions of law:

3 (A) Section 101(a)(15)(A) of the Immigra-
4 tion and Nationality Act (8 U.S.C.
5 1101(a)(15)(A)).

6 (B) Section 204(d)(2) of the Immigration
7 and Nationality Act (8 U.S.C. 1154) (as it will
8 take effect upon the entry into force of the Con-
9 vention on Protection of Children and Coopera-
10 tion in Respect to Inter-Country Adoption).

11 (C) Section 212(a)(3)(B)(vi)(II) of the Im-
12 migration and Nationality Act.

13 (D) Section 212(a)(3)(C) of the Immigra-
14 tion and Nationality Act (8 U.S.C.
15 1182(a)(3)(C)).

16 (E) Section 212(a)(10)(C) of the Immigra-
17 tion and Nationality Act (8 U.S.C.
18 1182(a)(10)(C)).

19 (F) Section 219(a) of the Immigration and
20 Nationality Act (8 U.S.C. 1189(a)).

21 (G) Section 237(a)(4)(C) of the Immigra-
22 tion and Nationality Act (8 U.S.C.
23 1227(a)(4)(C)).



1 (H) Section 401 of the Cuban Liberty and
2 Democratic Solidarity (LIBERTAD) Act of
3 1996 (22 U.S.C. 6034; Public Law 104–114).

4 (I) Section 613 of the Departments of
5 Commerce, Justice, and State, the Judiciary,
6 and Related Agencies Appropriations Act, 1999
7 (as contained in section 101(b) of division A of
8 Public Law 105–277) (Omnibus Consolidated
9 and Emergency Supplemental Appropriations
10 Act, 1999; 112 Stat. 2681; H.R. 4328 (origi-
11 nally H.R. 4276) as amended by section 617 of
12 Public Law 106–553).

13 (J) Section 801 of H.R. 3427, the Admiral
14 James W. Nance and Meg Donovan Foreign
15 Relations Authorization Act, Fiscal Years 2000
16 and 2001, as enacted by reference in Public
17 Law 106–113.

18 (K) Section 568 of the Foreign Operations,
19 Export Financing, and Related Programs Ap-
20 propriations Act, 2002 (Public Law 107–115).

21 (3) CONSTRUCTION REGARDING DELEGATION
22 OF AUTHORITY.—Nothing in this section shall be
23 construed to affect any delegation of authority to the
24 Secretary of State by the President pursuant to any



1 proclamation issued under section 212(f) of the Im-
2 migration and Nationality Act (8 U.S.C. 1182(f)).

3 (c) ASSIGNMENT OF HOMELAND SECURITY EMPLOY-
4 EES TO DIPLOMATIC AND CONSULAR POSTS.—

5 (1) IN GENERAL.—The Secretary is authorized
6 to assign employees of the Department of Homeland
7 Security to any diplomatic and consular posts
8 abroad to perform the following functions:

9 (A) Provide expert advice and training to
10 consular officers regarding specific security
11 threats relating to individual visa applications
12 in Saudi Arabia or classes of applications.

13 (B) Review any or all such applications
14 prior to their adjudication, either on the initia-
15 tive of the employee of the Department of
16 Homeland Security or upon request by a con-
17 sular officer or other person charged with adju-
18 dicating such applications.

19 (C) Conduct investigations with respect to
20 matters under the jurisdiction of the Secretary.

21 (2) PERMANENT ASSIGNMENT; PARTICIPATION
22 IN TERRORIST LOOKOUT COMMITTEE.—When appro-
23 priate, employees of the Department of Homeland
24 Security assigned to perform functions described in
25 paragraph (1) may be assigned permanently to over-



1 seas diplomatic or consular posts with country-spe-
2 cific or regional responsibility. If the Secretary so di-
3 rects, any such employee, when present at an over-
4 seas post, shall participate in the terrorist lookout
5 committee established under section 304 of the En-
6 hanced Border Security and Visa Entry Reform Act
7 of 2002 (8 U.S.C. 1733).

8 (3) TRAINING AND HIRING.—

9 (A) The Secretary shall ensure that any
10 employees of the Department of Homeland Se-
11 curity assigned to perform functions described
12 in paragraph (1) shall be provided all necessary
13 training to enable them to carry out such func-
14 tions, including training in foreign languages,
15 interview techniques, fraud detection tech-
16 niques, and other skills required by such em-
17 ployees, in conditions in the particular country
18 where each employee is assigned, and in other
19 appropriate areas of study.

20 (B) The Secretary shall promulgate regula-
21 tions within 60 days of the enactment of this
22 Act establishing foreign language proficiency re-
23 quirements for employees of the Department
24 performing the functions described in para-
25 graph (1) and providing that preference shall be



1 given to individuals who meet such require-
2 ments in hiring employees for the performance
3 of such functions.

4 (C) The Secretary is authorized to use the
5 National Foreign Affairs Training Center, on a
6 reimbursable basis, to obtain the training de-
7 scribed in subparagraph (A).

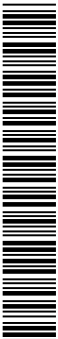
8 (d) NO CREATION OF PRIVATE RIGHT OF ACTION.—
9 Nothing in this section shall be construed to create or au-
10 thorize a private right of action to challenge a decision
11 of a consular officer or other United States official or em-
12 ployee to grant or deny a visa.

13 (e) STUDY REGARDING USE OF FOREIGN NATION-
14 ALS.—

15 (1) IN GENERAL.—The Secretary of Homeland
16 Security shall conduct a study of the role of foreign
17 nationals in the granting or refusal of visas and
18 other documents authorizing entry of aliens into the
19 United States. The study shall address the following:

20 (A) The proper role, if any, of foreign na-
21 tionals in the process of rendering decisions on
22 such grants and refusals.

23 (B) Any security concerns involving the
24 employment of foreign nationals.



1 (C) Whether there are cost-effective alter-
2 natives to the use of foreign nationals.

3 (2) REPORT.—Not later than 1 year after the
4 date of the enactment of this Act, the Secretary
5 shall submit a report containing the findings of the
6 study conducted under paragraph (1) to the Com-
7 mittee on the Judiciary, the Committee on Inter-
8 national Relations, and the Committee on Govern-
9 ment Reform of the House of Representatives, and
10 the Committee on the Judiciary, the Committee on
11 Foreign Relations, and the Committee on Govern-
12 ment Affairs of the Senate.

13 (f) REPORT.—Not later than 120 days after the date
14 of the enactment of this Act, the Director of the Office
15 of Science and Technology Policy shall submit to the Con-
16 gress a report on how the provisions of this section will
17 affect procedures for the issuance of student visas.

18 (g) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—
19 Notwithstanding any other provision of law, after the date
20 of the enactment of this Act all third party screening,
21 interview waiver, or other non-interview visa issuance pro-
22 grams in Saudi Arabia shall be terminated. On-site per-
23 sonnel of the Department of Homeland Security shall re-
24 view all visa applications prior to adjudication. All visa ap-
25 plicants in Saudi Arabia shall be interviewed unless on-



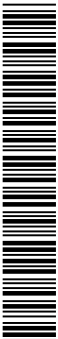
1 site personnel of the Department of Homeland Security
2 determine, in writing and pursuant to written guidelines
3 issued by the Secretary of Homeland Security, that the
4 alien is unlikely to present a risk to homeland security.
5 The Secretary of Homeland Security shall promulgate
6 such guidelines not later than 30 days after the date of
7 the enactment of this Act.

8 **SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPEC-**
9 **TION FUNCTIONS OF THE DEPARTMENT OF**
10 **AGRICULTURE.**

11 (a) TRANSFER OF AGRICULTURAL IMPORT AND
12 ENTRY INSPECTION FUNCTIONS.—There shall be trans-
13 ferred to the Secretary of Homeland Security the func-
14 tions of the Secretary of Agriculture relating to agricul-
15 tural import and entry inspection activities under the laws
16 specified in subsection (b).

17 (b) COVERED ANIMAL AND PLANT PROTECTION
18 LAWS.—The laws referred to in subsection (a) are the fol-
19 lowing:

20 (1) The Act commonly known as the Virus-
21 Serum-Toxin Act (the eighth paragraph under the
22 heading “Bureau of Animal Industry” in the Act of
23 March 4, 1913; 21 U.S.C. 151 et seq.).



1 (2) Section 1 of the Act of August 31, 1922
2 (commonly known as the Honeybee Act; 7 U.S.C.
3 281).

4 (3) Title III of the Federal Seed Act (7 U.S.C.
5 1581 et seq.).

6 (4) The Plant Protection Act (7 U.S.C. 7701 et
7 seq.).

8 (5) The Animal Protection Act (subtitle E of
9 title X of Public Law 107–171; 7 U.S.C. 8301 et
10 seq.).

11 (6) The Lacey Act Amendments of 1981 (16
12 U.S.C. 3371 et seq.).

13 (7) Section 11 of the Endangered Species Act
14 of 1973 (16 U.S.C. 1540).

15 (c) EXCLUSION OF QUARANTINE ACTIVITIES.—For
16 purposes of this section, the term “functions” does not
17 include any quarantine activities carried out under the
18 laws specified in subsection (b).

19 (d) EFFECT OF TRANSFER.—

20 (1) COMPLIANCE WITH DEPARTMENT OF AGRI-
21 CULTURE REGULATIONS.—The authority transferred
22 pursuant to subsection (a) shall be exercised by the
23 Secretary of Homeland Security in accordance with
24 the regulations, policies, and procedures issued by



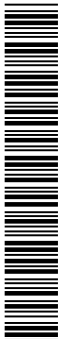
1 the Secretary of Agriculture regarding the adminis-
2 tration of the laws specified in subsection (b).

3 (2) RULEMAKING COORDINATION.—The Sec-
4 retary of Agriculture shall coordinate with the Sec-
5 retary of Homeland Security whenever the Secretary
6 of Agriculture prescribes regulations, policies, or
7 procedures for administering the laws specified in
8 subsection (b) at the locations referred to in sub-
9 section (a).

10 (3) EFFECTIVE ADMINISTRATION.—The Sec-
11 retary of Homeland Security, in consultation with
12 the Secretary of Agriculture, may issue such direc-
13 tives and guidelines as are necessary to ensure the
14 effective use of personnel of the Department of
15 Homeland Security to carry out the functions trans-
16 ferred pursuant to subsection (a).

17 (e) TRANSFER AGREEMENT.—

18 (1) AGREEMENT REQUIRED; REVISION.—Before
19 the end of the transition period, as defined in section
20 801(2), the Secretary of Agriculture and the Sec-
21 retary of Homeland Security shall enter into an
22 agreement to effectuate the transfer of functions re-
23 quired by subsection (a). The Secretary of Agri-
24 culture and the Secretary of Homeland Security may
25 jointly revise the agreement as necessary thereafter.



1 (2) REQUIRED TERMS.—The agreement re-
2 quired by this subsection shall specifically address
3 the following:

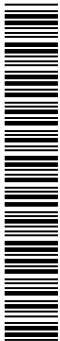
4 (A) The supervision by the Secretary of
5 Agriculture of the training of employees of the
6 Secretary of Homeland Security to carry out
7 the functions transferred pursuant to sub-
8 section (a).

9 (B) The transfer of funds to the Secretary
10 of Homeland Security under subsection (f).

11 (3) COOPERATION AND RECIPROCITY.—The
12 Secretary of Agriculture and the Secretary of Home-
13 land Security may include as part of the agreement
14 the following:

15 (A) Authority for the Secretary of Home-
16 land Security to perform functions delegated to
17 the Animal and Plant Health Inspection Service
18 of the Department of Agriculture regarding the
19 protection of domestic livestock and plants, but
20 not transferred to the Secretary of Homeland
21 Security pursuant to subsection (a).

22 (B) Authority for the Secretary of Agri-
23 culture to use employees of the Department of
24 Homeland Security to carry out authorities del-
25 egated to the Animal and Plant Health Inspec-



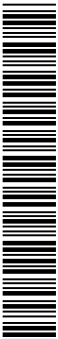
1 tion Service regarding the protection of domes-
2 tic livestock and plants.

3 (f) PERIODIC TRANSFER OF FUNDS TO DEPART-
4 MENT OF HOMELAND SECURITY.—

5 (1) TRANSFER OF FUNDS.—Out of funds col-
6 lected by fees authorized under sections 2508 and
7 2509 of the Food, Agriculture, Conservation, and
8 Trade Act of 1990 (21 U.S.C. 136, 136a), the Sec-
9 retary of Agriculture shall transfer, from time to
10 time in accordance with the agreement under sub-
11 section (e), to the Secretary of Homeland Security
12 funds for activities carried out by the Secretary of
13 Homeland Security for which such fees were col-
14 lected.

15 (2) LIMITATION.—The proportion of fees col-
16 lected pursuant to such sections that are transferred
17 to the Secretary of Homeland Security under this
18 subsection may not exceed the proportion of the
19 costs incurred by the Secretary of Homeland Secu-
20 rity to all costs incurred to carry out activities fund-
21 ed by such fees.

22 (g) TRANSFER OF DEPARTMENT OF AGRICULTURE
23 EMPLOYEES.—During the transition period, the Secretary
24 of Agriculture shall transfer to the Secretary of Homeland



1 Security not more than 3,200 full-time equivalent posi-
2 tions of the Department of Agriculture.

3 (h) PROTECTION OF INSPECTION ANIMALS.—Title V
4 of the Agricultural Risk Protection Act of 2000 (7 U.S.C.
5 2279e, 2279f) is amended—

6 (1) in section 501(a)—

7 (A) by inserting “or the Department of
8 Homeland Security” after “Department of Ag-
9 riculture”; and

10 (B) by inserting “or the Secretary of
11 Homeland Security” after “Secretary of Agri-
12 culture”;

13 (2) by striking “Secretary” each place it ap-
14 pears (other than in sections 501(a) and 501(e))
15 and inserting “Secretary concerned”; and

16 (3) by adding at the end of section 501 the fol-
17 lowing new subsection:

18 “(e) SECRETARY CONCERNED DEFINED.—In this
19 title, the term ‘Secretary concerned’ means—

20 “(1) the Secretary of Agriculture, with respect
21 to an animal used for purposes of official inspections
22 by the Department of Agriculture; and

23 “(2) the Secretary of Homeland Security, with
24 respect to an animal used for purposes of official in-



1 spections by the Department of Homeland Secu-
2 rity.”.

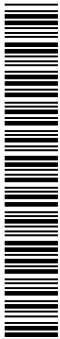
3 **SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL**
4 **SERVICES.**

5 (a) OPERATION, MAINTENANCE, AND PROTECTION
6 OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in
7 this Act may be construed to affect the functions or au-
8 thorities of the Administrator of General Services with re-
9 spect to the operation, maintenance, and protection of
10 buildings and grounds owned or occupied by the Federal
11 Government and under the jurisdiction, custody, or control
12 of the Administrator. Except for the law enforcement and
13 related security functions transferred under section
14 402(4), the Administrator shall retain all powers, func-
15 tions, and authorities vested in the Administrator under
16 the Federal Property and Administrative Services Act of
17 1949 (40 U.S.C. 471 et seq.) and other provisions of law
18 that are necessary for the operation, maintenance, and
19 protection of such buildings and grounds.

20 (b) COLLECTION OF RENTS AND FEES; FEDERAL
21 BUILDINGS FUND.—

22 (1) STATUTORY CONSTRUCTION.—Nothing in
23 this Act may be construed—

24 (A) to direct the transfer of, or affect, the
25 authority of the Administrator of General Serv-



1 ices to collect rents and fees, including fees col-
2 lected for protective services; or

3 (B) to authorize the Secretary or any other
4 official in the Department to obligate amounts
5 in the Federal Buildings Fund established by
6 section 210(f) of the Federal Property and Ad-
7 ministrative Services Act of 1949 (40 U.S.C.
8 490(f)).

9 (2) USE OF TRANSFERRED AMOUNTS.—Any
10 amounts transferred by the Administrator of Gen-
11 eral Services to the Secretary out of rents and fees
12 collected by the Administrator shall be used by the
13 Secretary solely for the protection of buildings or
14 grounds owned or occupied by the Federal Govern-
15 ment.

16 **SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY AD-**
17 **MINISTRATION.**

18 (a) CONSULTATION WITH FEDERAL AVIATION AD-
19 MINISTRATION.—The Secretary and other officials in the
20 Department shall consult with the Administrator of the
21 Federal Aviation Administration before taking any action
22 that might affect aviation safety, air carrier operations,
23 aircraft airworthiness, or the use of airspace. The Sec-
24 retary shall establish a liaison office within the Depart-



1 ment for the purpose of consulting with the Administrator
2 of the Federal Aviation Administration.

3 (b) REPORT TO CONGRESS.—Not later than 60 days
4 after the date of enactment of this Act, the Secretary of
5 Transportation shall transmit to Congress a report con-
6 taining a plan for complying with the requirements of sec-
7 tion 44901(d) of title 49, United States Code.

8 (c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

9 (1) GRANT OF AUTHORITY.—Nothing in this
10 Act may be construed to vest in the Secretary or any
11 other official in the Department any authority over
12 transportation security that is not vested in the
13 Under Secretary of Transportation for Security, or
14 in the Secretary of Transportation under chapter
15 449 of title 49, United States Code, on the day be-
16 fore the date of enactment of this Act.

17 (2) OBLIGATION OF AIP FUNDS.—Nothing in
18 this Act may be construed to authorize the Secretary
19 or any other official in the Department to obligate
20 amounts made available under section 48103 of title
21 49, United States Code.

22 **SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY**
23 **ADMINISTRATION AS A DISTINCT ENTITY.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of this Act, and subject to subsection (b), the Trans-



1 portation Security Administration shall be maintained as
2 a distinct entity within the Department under the Under
3 Secretary for Border Transportation and Security.

4 (b) SUNSET.—Subsection (a) shall cease to apply two
5 years after the date of enactment of this Act.

6 **SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED**
7 **THREATS TO PUBLIC TRANSPORTATION.**

8 On an annual basis, the Secretary, in consultation
9 with the heads of other appropriate Federal departments
10 and agencies, shall conduct an assessment of terrorist-re-
11 lated threats to all forms of public transportation, includ-
12 ing public gathering areas related to public transportation.

13 **SEC. 409. EXPLOSIVE DETECTION SYSTEMS.**

14 (a) INSTALLATION OF SYSTEMS.—Section 44901(d)
15 of title 49, United States Code, is amended by adding at
16 the end the following:

17 “(2) MODIFICATION OF AIRPORT TERMINAL
18 BUILDINGS TO ACCOMMODATE EXPLOSIVE DETEC-
19 TION SYSTEMS.—

20 “(A) NOTIFICATION OF AIRPORTS.—Not
21 later than October 1, 2002, the Under Sec-
22 retary shall notify the owner or operator of each
23 United States airport described in section
24 44903(c) of the number and type of explosive
25 detection systems that will be required to be de-

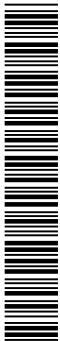


1 ployed at the airport in order to screen all
2 checked baggage by explosive detection systems
3 without imposing unreasonable delays on the
4 passengers using the airport.

5 “(B) ASSESSMENTS OF AIRPORT TER-
6 MINAL BUILDINGS.—If the owner or operator of
7 a United States airport described in section
8 44903(c) determines that the airport will not be
9 able to make the modifications to the airport’s
10 terminal buildings that are necessary to accom-
11 modate the explosive detection systems required
12 under subparagraph (A) in a cost-effective
13 manner on or before December 31, 2002, the
14 owner or operator shall provide notice of that
15 determination to the Under Secretary not later
16 than November 1, 2002.

17 “(C) PLANS FOR MAKING MODIFICATIONS
18 TO AIRPORT TERMINAL BUILDINGS.—

19 “(i) IN GENERAL.—If the owner or
20 operator of an airport provides notice to
21 the Under Secretary under subparagraph
22 (B), the Under Secretary, in consultation
23 with the owner or operator, shall develop,
24 not later than December 1, 2002, a plan
25 for making necessary modifications to the



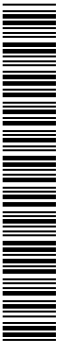
1 airport's terminal buildings so as to deploy
2 and fully utilize explosive detection systems
3 to screen all checked baggage.

4 “(ii) DEADLINE.—A plan developed
5 under this subparagraph shall include a
6 date for executing the plan. All such plans
7 shall be executed as expeditiously as prac-
8 ticable but not later than December 31,
9 2003.

10 “(iii) TRANSMISSION OF PLANS TO
11 CONGRESS.—On the date of completion of
12 a plan under this subparagraph, the Under
13 Secretary shall transmit a copy of the plan
14 to Congress. For security purposes, infor-
15 mation contained in the plan shall not be
16 disclosed to the public.

17 “(D) REQUIREMENTS FOR PLANS.—A plan
18 developed and published under subparagraph
19 (C), shall provide for, to the maximum extent
20 practicable—

21 “(i) the deployment of explosive detec-
22 tion systems in the baggage sorting area or
23 other non-public area rather than the lobby
24 of an airport terminal building; and

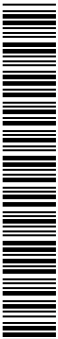


1 “(ii) the deployment of state of the
2 art explosive detection systems that have
3 high throughput, low false alarm rates,
4 and high reliability without reducing detec-
5 tion rates.

6 “(E) USE OF SCREENING METHODS OTHER
7 THAN EDS.—Notwithstanding the deadline in
8 paragraph (1)(A), after December 31, 2002, if
9 explosive detection systems are not screening all
10 checked baggage at a United States airport de-
11 scribed in section 44903(c), such baggage shall
12 be screened by the methods described in sub-
13 section (e) until such time as all checked bag-
14 gage is screened by explosive detection systems
15 at the airport.

16 “(3) PURCHASE OF EXPLOSIVE DETECTION
17 SYSTEMS.—Any explosive detection system required
18 to be purchased under paragraph (2)(A) shall be
19 purchased by the Under Secretary.

20 “(4) EXPLOSIVE DETECTION SYSTEM DE-
21 FINED.—In this subsection, the term ‘explosive de-
22 tection system’ means a device, or combination of
23 devices, that can detect different types of explo-
24 sives.”.



1 (b) CORRECTION OF REFERENCE.—Section 44901(e)
2 of title 49, United States Code, is amended by striking
3 “(b)(1)(A)” and inserting “(d)(1)(A)”.

4 **SEC. 410. TRANSPORTATION SECURITY.**

5 (a) TRANSPORTATION SECURITY OVERSIGHT
6 BOARD.—

7 (1) ESTABLISHMENT.—Section 115(a) of title
8 49, United States Code, is amended by striking “De-
9 partment of Transportation” and inserting “Depart-
10 ment of Homeland Security”.

11 (2) MEMBERSHIP.—Section 115(b)(1) of title
12 49, United States Code, is amended—

13 (A) by striking subparagraph (G);

14 (B) by redesignating subparagraphs (A)
15 through (F) as subparagraphs (B) through (G),
16 respectively; and

17 (C) by inserting before subparagraph (B)
18 (as so redesignated) the following:

19 “(A) The Secretary of Homeland Security,
20 or the Secretary’s designee.”.

21 (3) CHAIRPERSON.—Section 115(b)(2) of title
22 49, United States Code, is amended by striking
23 “Secretary of Transportation” and inserting “Sec-
24 retary of Homeland Security”.



1 (b) APPROVAL OF AIP GRANT APPLICATIONS FOR
2 SECURITY ACTIVITIES.—Section 47106 of title 49, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(g) CONSULTATION WITH SECRETARY OF HOME-
6 LAND SECURITY.—The Secretary shall consult with the
7 Secretary of Homeland Security before approving an ap-
8 plication under this subchapter for an airport development
9 project grant for activities described in section
10 47102(3)(B)(ii) (relating to security equipment) or section
11 47102(3)(B)(x) (relating to installation of bulk explosive
12 detection systems).”.

13 Subtitle B—Immigration and

14 Nationality Functions

15 CHAPTER 1—IMMIGRATION

16 ENFORCEMENT

17 SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY
18 FOR BORDER AND TRANSPORTATION SECU-
19 RITY.

20 In accordance with title VIII, there shall be trans-
21 ferred from the Commissioner of Immigration and Natu-
22 ralization to the Under Secretary for Border and Trans-
23 portation Security all functions performed under the fol-
24 lowing programs, and all personnel, assets, and liabilities



1 pertaining to such programs, immediately before such
2 transfer occurs:

3 (1) The Border Patrol program.

4 (2) The detention and removal program.

5 (3) The intelligence program.

6 (4) The investigations program.

7 (5) The inspections program.

8 **SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECU-**
9 **RITY.**

10 (a) ESTABLISHMENT OF BUREAU.—

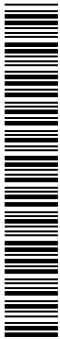
11 (1) IN GENERAL.—There is established in the
12 Department of Homeland Security a bureau to be
13 known as the “Bureau of Border Security”.

14 (2) ASSISTANT SECRETARY.—The head of the
15 Bureau of Border Security shall be the Assistant
16 Secretary of the Bureau of Border Security, who—

17 (A) shall report directly to the Under Sec-
18 retary for Border and Transportation Security;
19 and

20 (B) shall have a minimum of 10 years pro-
21 fessional experience in law enforcement, at least
22 5 of which shall have been years of service in
23 a managerial capacity.

24 (3) FUNCTIONS.—The Assistant Secretary of
25 the Bureau of Border Security—



1 (A) shall establish the policies for per-
2 forming such functions as are—

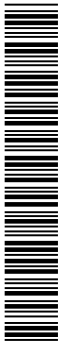
3 (i) transferred to the Under Secretary
4 for Border and Transportation Security by
5 section 411 and delegated to the Assistant
6 Secretary by the Under Secretary for Bor-
7 der and Transportation Security; or

8 (ii) otherwise vested in the Assistant
9 Secretary by law;

10 (B) shall oversee the administration of
11 such policies; and

12 (C) shall advise the Under Secretary for
13 Border and Transportation Security with re-
14 spect to any policy or operation of the Bureau
15 of Border Security that may affect the Bureau
16 of Citizenship and Immigration Services of the
17 Department of Justice established under chap-
18 ter 2, including potentially conflicting policies
19 or operations.

20 (4) PROGRAM TO COLLECT INFORMATION RE-
21 LATING TO FOREIGN STUDENTS.—The Assistant
22 Secretary of the Bureau of Border Security shall be
23 responsible for administering the program to collect
24 information relating to nonimmigrant foreign stu-
25 dents and other exchange program participants de-



1 scribed in section 641 of the Illegal Immigration Re-
2 form and Immigrant Responsibility Act of 1996 (8
3 U.S.C. 1372), including the Student and Exchange
4 Visitor Information System established under that
5 section, and shall use such information to carry out
6 the enforcement functions of the Bureau.

7 (5) MANAGERIAL ROTATION PROGRAM.—

8 (A) IN GENERAL.—Not later than 1 year
9 after the date on which the transfer of func-
10 tions specified under section 411 takes effect,
11 the Assistant Secretary of the Bureau of Bor-
12 der Security shall design and implement a man-
13 agerial rotation program under which employees
14 of such bureau holding positions involving su-
15 pervisory or managerial responsibility and clas-
16 sified, in accordance with chapter 51 of title 5,
17 United States Code, as a GS-14 or above, shall,
18 as a condition on further promotion—

19 (i) gain some experience in all the
20 major functions performed by such bureau;
21 and

22 (ii) work in at least one local office of
23 such bureau.

24 (B) REPORT.—Not later than 2 years after
25 the date on which the transfer of functions



1 specified under section 411 takes effect, the
2 Secretary shall submit a report to the Congress
3 on the implementation of such program.

4 (b) CHIEF OF POLICY AND STRATEGY.—

5 (1) IN GENERAL.—There shall be a position of
6 Chief of Policy and Strategy for the Bureau of Bor-
7 der Security.

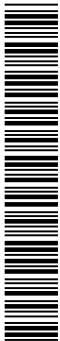
8 (2) FUNCTIONS.—In consultation with Bureau
9 of Border Security personnel in local offices, the
10 Chief of Policy and Strategy shall be responsible
11 for—

12 (A) establishing national immigration en-
13 forcement policies and priorities;

14 (B) performing policy research and anal-
15 ysis on immigration enforcement issues; and

16 (C) coordinating immigration policy issues
17 with the Chief of Policy and Strategy for the
18 Bureau of Citizenship and Immigration Services
19 of the Department of Justice (established under
20 chapter 2), and the Assistant Attorney General
21 for Citizenship and Immigration Services, as
22 appropriate.

23 (c) CITIZENSHIP AND IMMIGRATION SERVICES LIAI-
24 SON.—



1 (1) IN GENERAL.—There shall be a position of
2 Citizenship and Immigration Services Liaison for the
3 Bureau of Border Security.

4 (2) FUNCTIONS.—The Citizenship and Immi-
5 gration Services Liaison shall be responsible for the
6 appropriate allocation and coordination of resources
7 involved in supporting shared support functions for
8 the Bureau of Citizenship and Immigration Services
9 of the Department of Justice (established under
10 chapter 2) and the Bureau of Border Security,
11 including—

12 (A) information resources management, in-
13 cluding computer databases and information
14 technology;

15 (B) records and file management; and

16 (C) forms management.

17 **SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY**
18 **REVIEW.**

19 The Under Secretary for Border and Transportation
20 Security shall be responsible for—

21 (1) conducting investigations of noncriminal al-
22 legations of misconduct, corruption, and fraud in-
23 volving any employee of the Bureau of Border Secu-
24 rity that are not subject to investigation by the In-
25 spector General for the Department;



1 (2) inspecting the operations of the Bureau of
2 Border Security and providing assessments of the
3 quality of the operations of such bureau as a whole
4 and each of its components; and
5 (3) providing an analysis of the management of
6 the Bureau of Border Security.

7 **SEC. 414. EMPLOYEE DISCIPLINE.**

8 The Under Secretary for Border and Transportation
9 Security may, notwithstanding any other provision of law,
10 impose disciplinary action, including termination of em-
11 ployment, pursuant to policies and procedures applicable
12 to employees of the Federal Bureau of Investigation, on
13 any employee of the Bureau of Border Security who will-
14 fully deceives the Congress or agency leadership on any
15 matter.

16 **SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNC-**
17 **TIONS.**

18 (a) IN GENERAL.—The Secretary, not later than 1
19 year after being sworn into office, shall submit to the
20 Committees on Appropriations and the Judiciary of the
21 United States House of Representatives and of the Senate
22 a report with a plan detailing how the Bureau of Border
23 Security, after the transfer of functions specified under
24 section 411 takes effect, will enforce comprehensively, ef-
25 fectively, and fairly all the enforcement provisions of the



1 Immigration and Nationality Act (8 U.S.C. 1101 et seq.)
2 relating to such functions.

3 (b) CONSULTATION.—In carrying out subsection (a),
4 the Secretary of Homeland Security shall consult with the
5 Attorney General, the Secretary of State, the Assistant
6 Attorney General for Citizenship and Immigration Serv-
7 ices, the Director of the Federal Bureau of Investigation,
8 the Secretary of the Treasury, the Secretary of Labor, the
9 Commissioner of Social Security, the Director of the Exec-
10 utive Office for Immigration Review, and the heads of
11 State and local law enforcement agencies to determine how
12 to most effectively conduct enforcement operations.

13 **CHAPTER 2—CITIZENSHIP AND**
14 **IMMIGRATION SERVICES**

15 **Subchapter A—Transfers of Functions**

16 **SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP**
17 **AND IMMIGRATION SERVICES.**

18 (a) ESTABLISHMENT OF BUREAU.—

19 (1) IN GENERAL.—There is established in the
20 Department of Justice a bureau to be known as the
21 “Bureau of Citizenship and Immigration Services”.

22 (2) ASSISTANT ATTORNEY GENERAL.—The
23 head of the Bureau of Citizenship and Immigration
24 Services shall be the Assistant Attorney General for
25 Citizenship and Immigration Services, who—



1 (A) shall report directly to the Deputy At-
2 torney General; and

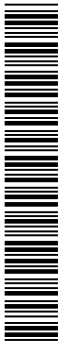
3 (B) shall have a minimum of 10 years pro-
4 fessional experience in the rendering of adju-
5 dications on the provision of government bene-
6 fits or services, at least 5 of which shall have
7 been years of service in a managerial capacity
8 or in a position affording comparable manage-
9 ment experience.

10 (3) FUNCTIONS.—The Assistant Attorney Gen-
11 eral for Citizenship and Immigration Services—

12 (A) shall establish the policies for per-
13 forming such functions as are transferred to the
14 Assistant Attorney General by this section or
15 this Act or otherwise vested in the Assistant At-
16 torney General by law;

17 (B) shall oversee the administration of
18 such policies;

19 (C) shall advise the Deputy Attorney Gen-
20 eral with respect to any policy or operation of
21 the Bureau of Citizenship and Immigration
22 Services that may affect the Bureau of Border
23 Security of the Department of Homeland Secu-
24 rity, including potentially conflicting policies or
25 operations;



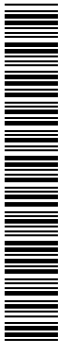
1 (D) shall meet regularly with the Ombuds-
2 man described in section 422 to correct serious
3 service problems identified by the Ombudsman;
4 and

5 (E) shall establish procedures requiring a
6 formal response to any recommendations sub-
7 mitted in the Ombudsman's annual report to
8 the Congress within 3 months after its submis-
9 sion to the Congress.

10 (4) MANAGERIAL ROTATION PROGRAM.—

11 (A) IN GENERAL.—Not later than 1 year
12 after the effective date specified in section 427,
13 the Assistant Attorney General for Citizenship
14 and Immigration Services shall design and im-
15 plement a managerial rotation program under
16 which employees of such bureau holding posi-
17 tions involving supervisory or managerial re-
18 sponsibility and classified, in accordance with
19 chapter 51 of title 5, United States Code, as a
20 GS-14 or above, shall, as a condition on further
21 promotion—

22 (i) gain some experience in all the
23 major functions performed by such bureau;
24 and



1 (ii) work in at least one field office
2 and one service center of such bureau.

3 (B) REPORT.—Not later than 2 years after
4 the effective date specified in section 427, the
5 Attorney General shall submit a report to the
6 Congress on the implementation of such pro-
7 gram.

8 (5) PILOT INITIATIVES FOR BACKLOG ELIMI-
9 NATION.—The Assistant Attorney General for Citi-
10 zenship and Immigration Services is authorized to
11 implement innovative pilot initiatives to eliminate
12 any remaining backlog in the processing of immigra-
13 tion benefit applications, and to prevent any backlog
14 in the processing of such applications from recur-
15 ring, in accordance with section 204(a) of the Immi-
16 gration Services and Infrastructure Improvements
17 Act of 2000 (8 U.S.C. 1573(a)). Such initiatives
18 may include measures such as increasing personnel,
19 transferring personnel to focus on areas with the
20 largest potential for backlog, and streamlining pa-
21 perwork.

22 (b) TRANSFER OF FUNCTIONS FROM COMMIS-
23 SIONER.—There are transferred from the Commissioner
24 of Immigration and Naturalization to the Assistant Attor-
25 ney General for Citizenship and Immigration Services the



1 following functions, and all personnel, infrastructure, and
2 funding provided to the Commissioner in support of such
3 functions immediately before the effective date specified
4 in section 427:

5 (1) Adjudications of immigrant visa petitions.

6 (2) Adjudications of naturalization petitions.

7 (3) Adjudications of asylum and refugee appli-
8 cations.

9 (4) Adjudications performed at service centers.

10 (5) All other adjudications performed by the
11 Immigration and Naturalization Service immediately
12 before the effective date specified in section 427.

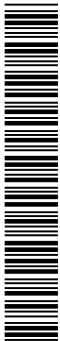
13 (c) CHIEF OF POLICY AND STRATEGY.—

14 (1) IN GENERAL.—There shall be a position of
15 Chief of Policy and Strategy for the Bureau of Citi-
16 zenship and Immigration Services.

17 (2) FUNCTIONS.—In consultation with Bureau
18 of Citizenship and Immigration Services personnel in
19 field offices, the Chief of Policy and Strategy shall
20 be responsible for—

21 (A) establishing national immigration serv-
22 ices policies and priorities;

23 (B) performing policy research and anal-
24 ysis on immigration services issues; and



1 (C) coordinating immigration policy issues
2 with the Chief of Policy and Strategy for the
3 Bureau of Border Security of the Department
4 of Homeland Security.

5 (d) GENERAL COUNSEL.—

6 (1) IN GENERAL.—There shall be a position of
7 General Counsel for the Bureau of Citizenship and
8 Immigration Services.

9 (2) FUNCTIONS.—The General Counsel shall
10 serve as the principal legal advisor to the Assistant
11 Attorney General for Citizenship and Immigration
12 Services. The General Counsel shall be responsible
13 for—

14 (A) providing specialized legal advice, opin-
15 ions, determinations, regulations, and any other
16 assistance to the Assistant Attorney General for
17 Citizenship and Immigration Services with re-
18 spect to legal matters affecting the Bureau of
19 Citizenship and Immigration Services; and

20 (B) representing the Bureau of Citizenship
21 and Immigration Services in visa petition ap-
22 peal proceedings before the Executive Office for
23 Immigration Review and in other legal or ad-
24 ministrative proceedings involving immigration
25 services issues.



1 (e) CHIEF BUDGET OFFICER.—

2 (1) IN GENERAL.—There shall be a position of
3 Chief Budget Officer for the Bureau of Citizenship
4 and Immigration Services.

5 (2) FUNCTIONS.—

6 (A) IN GENERAL.—The Chief Budget Offi-
7 cer shall be responsible for—

8 (i) formulating and executing the
9 budget of the Bureau of Citizenship and
10 Immigration Services;

11 (ii) financial management of the Bu-
12 reau of Citizenship and Immigration Serv-
13 ices; and

14 (iii) collecting all payments, fines, and
15 other debts for the Bureau of Citizenship
16 and Immigration Services.

17 (3) AUTHORITY AND FUNCTIONS OF AGENCY
18 CHIEF FINANCIAL OFFICERS.—The Chief Budget
19 Officer for the Bureau of Citizenship and Immigra-
20 tion Services shall have the authorities and functions
21 described in section 902 of title 31, United States
22 Code, in relation to financial activities of such bu-
23 reau.

24 (f) CHIEF OF CONGRESSIONAL, INTERGOVERN-
25 MENTAL, AND PUBLIC AFFAIRS.—



1 (1) IN GENERAL.—There shall be a position of
2 Chief of Congressional, Intergovernmental, and Pub-
3 lic Affairs for the Bureau of Citizenship and Immi-
4 gration Services.

5 (2) FUNCTIONS.—The Chief of Congressional,
6 Intergovernmental, and Public Affairs shall be re-
7 sponsible for—

8 (A) providing information relating to immi-
9 gration services to the Congress, including in-
10 formation on specific cases relating to immigra-
11 tion services issues;

12 (B) serving as a liaison with other Federal
13 agencies on immigration services issues; and

14 (C) responding to inquiries from the media
15 and the general public on immigration services
16 issues.

17 (g) BORDER SECURITY LIAISON.—

18 (1) IN GENERAL.—There shall be a position of
19 Border Security Liaison for the Bureau of Citizen-
20 ship and Immigration Services.

21 (2) FUNCTIONS.—The Border Security Liaison
22 shall be responsible for the appropriate allocation
23 and coordination of resources involved in supporting
24 shared support functions for the Bureau of Border
25 Security of the Department of Homeland Security



1 and the Bureau of Citizenship and Immigration
2 Services, including—

3 (A) information resources management, in-
4 cluding computer databases and information
5 technology;

6 (B) records and file management; and

7 (C) forms management.

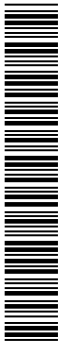
8 (h) CHIEF OF OFFICE OF CITIZENSHIP.—

9 (1) IN GENERAL.—There shall be a position of
10 Chief of the Office of Citizenship for the Bureau of
11 Citizenship and Immigration Services.

12 (2) FUNCTIONS.—The Chief of the Office of
13 Citizenship for the Bureau of Citizenship and Immi-
14 gration Services shall be responsible for promoting
15 instruction and training on citizenship responsibil-
16 ities for aliens interested in becoming naturalized
17 citizens of the United States, including the develop-
18 ment of educational materials.

19 **SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OM-**
20 **BUDSMAN.**

21 (a) IN GENERAL.—Within the Department of Jus-
22 tice, there shall be a position of Citizenship and Immigra-
23 tion Services Ombudsman (in this section referred to as
24 the “Ombudsman”). The Ombudsman shall report directly
25 to the Deputy Attorney General. The Ombudsman shall



1 have a background in customer service as well as immigra-
2 tion law.

3 (b) FUNCTIONS.—It shall be the function of the
4 Ombudsman—

5 (1) to assist individuals and employers in re-
6 solving problems with the Bureau of Citizenship and
7 Immigration Services;

8 (2) to identify areas in which individuals and
9 employers have problems in dealing with the Bureau
10 of Citizenship and Immigration Services;

11 (3) to the extent possible, to propose changes in
12 the administrative practices of the Bureau of Citi-
13 zenship and Immigration Services to mitigate prob-
14 lems identified under paragraph (2); and

15 (4) to identify potential legislative changes that
16 may be appropriate to mitigate such problems.

17 (c) ANNUAL REPORTS.—

18 (1) OBJECTIVES.—Not later than June 30 of
19 each calendar year, the Ombudsman shall report to
20 the Committee on the Judiciary of the United States
21 House of Representatives and the Senate on the ob-
22 jectives of the Office of the Ombudsman for the fis-
23 cal year beginning in such calendar year. Any such
24 report shall contain full and substantive analysis, in
25 addition to statistical information, and—



1 (A) shall identify the initiatives the Office
2 of the Ombudsman has taken on improving
3 services and responsiveness of the Bureau of
4 Citizenship and Immigration Services;

5 (B) shall contain a summary of the most
6 pervasive and serious problems encountered by
7 individuals and employers, including a descrip-
8 tion of the nature of such problems;

9 (C) shall contain an inventory of the items
10 described in subparagraphs (A) and (B) for
11 which action has been taken and the result of
12 such action;

13 (D) shall contain an inventory of the items
14 described in subparagraphs (A) and (B) for
15 which action remains to be completed and the
16 period during which each item has remained on
17 such inventory;

18 (E) shall contain an inventory of the items
19 described in subparagraphs (A) and (B) for
20 which no action has been taken, the period dur-
21 ing which each item has remained on such in-
22 ventory, the reasons for the inaction, and shall
23 identify any official of the Bureau of Citizen-
24 ship and Immigration Services who is respon-
25 sible for such inaction;



1 (F) shall contain recommendations for
2 such administrative and legislative action as
3 may be appropriate to resolve problems encoun-
4 tered by individuals and employers, including
5 problems created by excessive backlogs in the
6 adjudication and processing of immigration ben-
7 efit petitions and applications; and

8 (G) shall include such other information as
9 the Ombudsman may deem advisable.

10 (2) REPORT TO BE SUBMITTED DIRECTLY.—

11 Each report required under this subsection shall be
12 provided directly to the committees described in
13 paragraph (1) without any prior review or comment
14 from the Attorney General, Deputy Attorney Gen-
15 eral, Assistant Attorney General for Citizenship and
16 Immigration Services, or any other officer or em-
17 ployee of the Department of Justice or the Office of
18 Management and Budget.

19 (d) OTHER RESPONSIBILITIES.—The Ombudsman—

20 (1) shall monitor the coverage and geographic
21 allocation of local offices of the Ombudsman;

22 (2) shall develop guidance to be distributed to
23 all officers and employees of the Bureau of Citizen-
24 ship and Immigration Services outlining the criteria



1 for referral of inquiries to local offices of the Om-
2 budsman;

3 (3) shall ensure that the local telephone number
4 for each local office of the Ombudsman is published
5 and available to individuals and employers served by
6 the office; and

7 (4) shall meet regularly with the Assistant At-
8 torney General for Citizenship and Immigration
9 Services to identify serious service problems and to
10 present recommendations for such administrative ac-
11 tion as may be appropriate to resolve problems en-
12 countered by individuals and employers.

13 (e) PERSONNEL ACTIONS.—

14 (1) IN GENERAL.—The Ombudsman shall have
15 the responsibility and authority—

16 (A) to appoint local ombudsmen and make
17 available at least 1 such ombudsman for each
18 State; and

19 (B) to evaluate and take personnel actions
20 (including dismissal) with respect to any em-
21 ployee of any local office of the Ombudsman.

22 (2) CONSULTATION.—The Ombudsman may
23 consult with the appropriate supervisory personnel of
24 the Bureau of Citizenship and Immigration Services



1 in carrying out the Ombudsman's responsibilities
2 under this subsection.

3 (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP
4 AND IMMIGRATION SERVICES.—The Assistant Attorney
5 General for Citizenship and Immigration Services shall es-
6 tablish procedures requiring a formal response to all rec-
7 ommendations submitted to such Assistant Attorney Gen-
8 eral by the Ombudsman within 3 months after submission
9 to such director.

10 (g) OPERATION OF LOCAL OFFICES.—

11 (1) IN GENERAL.—Each local ombudsman—

12 (A) shall report to the Ombudsman or the
13 delegate thereof;

14 (B) may consult with the appropriate su-
15 pervisory personnel of the Bureau of Citizen-
16 ship and Immigration Services regarding the
17 daily operation of the local office of such om-
18 budsman;

19 (C) shall, at the initial meeting with any
20 individual or employer seeking the assistance of
21 such local office, notify such individual or em-
22 ployer that the local offices of the Ombudsman
23 operate independently of any other component
24 of the Department of Justice and report di-



1 rectly to the Congress through the Ombudsman;
2 and

3 (D) at the local ombudsman's discretion,
4 may determine not to disclose to the Bureau of
5 Citizenship and Immigration Services contact
6 with, or information provided by, such indi-
7 vidual or employer.

8 (2) MAINTENANCE OF INDEPENDENT COMMU-
9 NICATIONS.—Each local office of the Ombudsman
10 shall maintain a phone, facsimile, and other means
11 of electronic communication access, and a post office
12 address, that is separate from those maintained by
13 the Bureau of Citizenship and Immigration Services,
14 or any component of the Bureau of Citizenship and
15 Immigration Services.

16 **SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY**
17 **REVIEW.**

18 (a) IN GENERAL.—The Assistant Attorney General
19 for Citizenship and Immigration Services shall be respon-
20 sible for—

21 (1) conducting investigations of noncriminal al-
22 legations of misconduct, corruption, and fraud in-
23 volving any employee of the Bureau of Citizenship
24 and Immigration Services that are not subject to in-



1 vestigation by the Department of Justice Office of
2 the Inspector General;

3 (2) inspecting the operations of the Bureau of
4 Citizenship and Immigration Services and providing
5 assessments of the quality of the operations of such
6 bureau as a whole and each of its components; and

7 (3) providing an analysis of the management of
8 the Bureau of Citizenship and Immigration Services.

9 (b) SPECIAL CONSIDERATIONS.—In providing assess-
10 ments in accordance with subsection (a)(2) with respect
11 to a decision of the Bureau of Citizenship and Immigra-
12 tion Services, or any of its components, consideration shall
13 be given to—

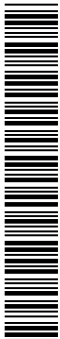
14 (1) the accuracy of the findings of fact and con-
15 clusions of law used in rendering the decision;

16 (2) any fraud or misrepresentation associated
17 with the decision; and

18 (3) the efficiency with which the decision was
19 rendered.

20 **SEC. 424. EMPLOYEE DISCIPLINE.**

21 The Assistant Attorney General for Citizenship and
22 Immigration Services may, notwithstanding any other pro-
23 vision of law, impose disciplinary action, including termi-
24 nation of employment, pursuant to policies and procedures
25 applicable to employees of the Federal Bureau of Inves-



1 tigation, on any employee of the Bureau of Citizenship and
2 Immigration Services who willfully deceives the Congress
3 or agency leadership on any matter.

4 **SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BU-**
5 **REAU OF JUSTICE STATISTICS.**

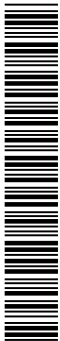
6 (a) IN GENERAL.—Part C of title I of the Omnibus
7 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
8 3731 et seq.) is amended by adding at the end the fol-
9 lowing:

10 “OFFICE OF IMMIGRATION STATISTICS

11 “SEC. 305. (a) There is established within the Bu-
12 reau of Justice Statistics of the Department of Justice
13 an Office of Immigration Statistics (in this section re-
14 ferred to as the ‘Office’), which shall be headed by a Direc-
15 tor who shall be appointed by the Attorney General and
16 who shall report to the Director of Justice Statistics.

17 “(b) The Director of the Office shall be responsible
18 for the following:

19 “(1) Maintenance of all immigration statistical
20 information of the Bureau of Citizenship and Immi-
21 gration Services and the Executive Office for Immi-
22 gration Review. Such statistical information shall in-
23 clude information and statistics of the type con-
24 tained in the publication entitled ‘Statistical Year-
25 book of the Immigration and Naturalization Service’
26 prepared by the Immigration and Naturalization



1 Service (as in effect on the day prior to the effective
2 date specified in section 427 of the Homeland Secu-
3 rity Act of 2002), including region-by-region statis-
4 tics on the aggregate number of applications and pe-
5 titions filed by an alien (or filed on behalf of an
6 alien) and denied by such offices and bureaus, and
7 the reasons for such denials, disaggregated by cat-
8 egory of denial and application or petition type.

9 “(2) Establishment of standards of reliability
10 and validity for immigration statistics collected by
11 the Bureau of Citizenship and Immigration Services
12 and the Executive Office for Immigration Review.

13 “(c) The Bureau of Citizenship and Immigration
14 Services and the Executive Office for Immigration Review
15 shall provide statistical information to the Office of Immi-
16 gration Statistics from the operational data systems con-
17 trolled by the Bureau of Citizenship and Immigration
18 Services and the Executive Office for Immigration Review,
19 respectively, for the purpose of meeting the responsibilities
20 of the Director.”.

21 (b) TRANSFER OF FUNCTIONS.—There are trans-
22 ferred to the Office of Immigration Statistics established
23 under section 305 of the Omnibus Crime Control and Safe
24 Streets Act of 1968, as added by subsection (a), the func-
25 tions performed immediately before such transfer occurs



1 by the Statistics Branch of the Office of Policy and Plan-
2 ning of the Immigration and Naturalization Service with
3 respect to the following:

4 (1) Adjudications of immigrant visa petitions.

5 (2) Adjudications of naturalization petitions.

6 (3) Adjudications of asylum and refugee appli-
7 cations.

8 (4) Adjudications performed at service centers.

9 (5) All other adjudications performed by the
10 Immigration and Naturalization Service.

11 (c) CONFORMING AMENDMENTS.—Section 302(c) of
12 the Omnibus Crime Control and Safe Streets Act of 1968
13 (42 U.S.C. 3732(c)) is amended—

14 (1) by striking “and” at the end of paragraph
15 (22);

16 (2) by striking the period at the end of para-
17 graph (23) and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(24) collect, maintain, compile, analyze, pub-
20 lish, and disseminate information and statistics in-
21 volving the functions of the Bureau of Citizenship
22 and Immigration Services and the Executive Office
23 for Immigration Review.”.



1 **SEC. 426. PRESERVATION OF ATTORNEY GENERAL'S AU-**
2 **THORITY.**

3 (a) IN GENERAL.—Any function for which this sub-
4 chapter vests responsibility in an official other than the
5 Attorney General, or which is transferred by this sub-
6 chapter to such an official, may, notwithstanding any pro-
7 vision of this subchapter, be performed by the Attorney
8 General, or the Attorney General's delegate, in lieu of such
9 official.

10 (b) REFERENCES.—In a case in which the Attorney
11 General performs a function described in subsection (a),
12 any reference in any other Federal law, Executive order,
13 rule, regulation, document, or delegation of authority to
14 the official otherwise responsible for the function is
15 deemed to refer to the Attorney General.

16 **SEC. 427. EFFECTIVE DATE.**

17 Notwithstanding section 4, this subchapter, and the
18 amendments made by this subchapter, shall take effect on
19 the date on which the transfer of functions specified under
20 section 411 takes effect.

21 **SEC. 428. TRANSITION.**

22 (a) REFERENCES.—With respect to any function
23 transferred by this subchapter to, and exercised on or
24 after the effective date specified in section 427 by, the As-
25 sistant Attorney General for Citizenship and Immigration
26 Services, any reference in any other Federal law, Execu-



1 tive order, rule, regulation, or delegation of authority, or
2 any document of or pertaining to a component of govern-
3 ment from which such function is transferred—

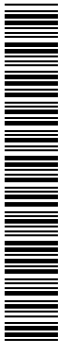
4 (1) to the head of such component is deemed to
5 refer to the Assistant Attorney General for Citizen-
6 ship and Immigration Services; or

7 (2) to such component is deemed to refer to the
8 Bureau of Citizenship and Immigration Services.

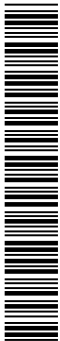
9 (b) OTHER TRANSITION ISSUES.—

10 (1) EXERCISE OF AUTHORITIES.—Except as
11 otherwise provided by law, a Federal official to
12 whom a function is transferred by this subchapter
13 may, for purposes of performing the function, exer-
14 cise all authorities under any other provision of law
15 that were available with respect to the performance
16 of that function to the official responsible for the
17 performance of the function immediately before the
18 effective date specified in section 427.

19 (2) SAVINGS PROVISIONS.—Subsections (a), (b),
20 and (c) of section 812 shall apply to a transfer of
21 functions under this subchapter in the same manner
22 as such provisions apply to a transfer of functions
23 under this Act to the Department of Homeland Se-
24 curity.



1 (3) TRANSFER AND ALLOCATION OF APPRO-
2 PRIATIONS AND PERSONNEL.—The personnel of the
3 Department of Justice employed in connection with
4 the functions transferred by this subchapter (and
5 functions that the Attorney General determines are
6 properly related to the functions of the Bureau of
7 Citizenship and Immigration Services), and the as-
8 sets, liabilities, contracts, property, records, and un-
9 expended balance of appropriations, authorizations,
10 allocations, and other funds employed, held, used,
11 arising from, available to, or to be made available to,
12 the Immigration and Naturalization Service in con-
13 nection with the functions transferred by this sub-
14 chapter, subject to section 202 of the Budget and
15 Accounting Procedures Act of 1950, shall be trans-
16 ferred to the Assistant Attorney General for Citizen-
17 ship and Immigration Services for allocation to the
18 appropriate component of the Department of Jus-
19 tice. Unexpended funds transferred pursuant to this
20 paragraph shall be used only for the purposes for
21 which the funds were originally authorized and ap-
22 propriated. The Attorney General shall have the
23 right to adjust or realign transfers of funds and per-
24 sonnel effected pursuant to this subchapter for a pe-



1 riod of 2 years after the effective date specified in
2 section 427.

3 (4) AUTHORITIES OF ATTORNEY GENERAL.—

4 The Attorney General (or a delegate of the Attorney
5 General), at such time or times as the Attorney Gen-
6 eral (or the delegate) shall provide, may make such
7 determinations as may be necessary with regard to
8 the functions transferred by this subchapter, and
9 may make such additional incidental dispositions of
10 personnel, assets, liabilities, grants, contracts, prop-
11 erty, records, and unexpended balances of appropria-
12 tions, authorizations, allocations, and other funds
13 held, used, arising from, available to, or to be made
14 available in connection with such functions, as may
15 be necessary to carry out the provisions of this sub-
16 chapter. The Attorney General shall provide for such
17 further measures and dispositions as may be nec-
18 essary to effectuate the purposes of this subchapter.

19 **Subchapter B—Other Provisions**

20 **SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION**
21 **SERVICES.**

22 (a) ESTABLISHMENT OF FEES FOR ADJUDICATION
23 AND NATURALIZATION SERVICES.—Section 286(m) of the
24 Immigration and Nationality Act (8 U.S.C. 1356(m)) is
25 amended by striking “services, including the costs of simi-



1 lar services provided without charge to asylum applicants
2 or other immigrants.” and inserting “services.”.

3 (b) **AUTHORIZATION OF APPROPRIATIONS FOR REF-**
4 **UGEE AND ASYLUM ADJUDICATIONS.**—There are author-
5 ized to be appropriated such sums as may be necessary
6 to carry out the provisions of sections 207 through 209
7 of the Immigration and Nationality Act (8 U.S.C. 1157–
8 1159). All funds appropriated under this subsection shall
9 be deposited into the Immigration Examinations Fee Ac-
10 count established under section 286(m) of the Immigra-
11 tion and Nationality Act (8 U.S.C. 1356(m)) and shall
12 remain available until expended.

13 **SEC. 432. BACKLOG ELIMINATION.**

14 Section 204(a) of the Immigration Services and In-
15 frastructure Improvements Act of 2000 (8 U.S.C.
16 1573(a)) is amended by striking “October 17, 2000;” and
17 inserting “1 year after the date of the enactment of the
18 Homeland Security Act of 2002;”.

19 **SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.**

20 (a) **IN GENERAL.**—The Attorney General, not later
21 than 1 year after the effective date of this Act, shall sub-
22 mit to the Committees on the Judiciary and Appropria-
23 tions of the United States House of Representatives and
24 of the Senate a report with a plan detailing how the Bu-
25 reau of Citizenship and Immigration Services, after the



1 transfer of functions specified in subchapter 1 takes effect,
2 will complete efficiently, fairly, and within a reasonable
3 time, the adjudications described in paragraphs (1)
4 through (5) of section 421(b).

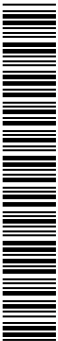
5 (b) CONTENTS.—For each type of adjudication to be
6 undertaken by the Assistant Attorney General for Citizen-
7 ship and Immigration Services, the report shall include the
8 following:

9 (1) Any potential savings of resources that may
10 be implemented without affecting the quality of the
11 adjudication.

12 (2) The goal for processing time with respect to
13 the application.

14 (3) Any statutory modifications with respect to
15 the adjudication that the Attorney General considers
16 advisable.

17 (c) CONSULTATION.—In carrying out subsection (a),
18 the Attorney General shall consult with the Secretary of
19 State, the Secretary of Labor, the Assistant Secretary of
20 the Bureau of Border Security of the Department of
21 Homeland Security, and the Director of the Executive Of-
22 fice for Immigration Review to determine how to stream-
23 line and improve the process for applying for and making
24 adjudications described in section 421(b) and related proc-
25 esses.



1 **SEC. 434. REPORT ON RESPONDING TO FLUCTUATING**
2 **NEEDS.**

3 Not later than 30 days after the date of the enact-
4 ment of this Act, the Attorney General shall submit to
5 the Congress a report on changes in law, including
6 changes in authorizations of appropriations and in appro-
7 priations, that are needed to permit the Immigration and
8 Naturalization Service, and, after the transfer of functions
9 specified in subchapter 1 takes effect, the Bureau of Citi-
10 zenship and Immigration Services, to ensure a prompt and
11 timely response to emergent, unforeseen, or impending
12 changes in the number of applications for immigration
13 benefits, and otherwise to ensure the accommodation of
14 changing immigration service needs.

15 **SEC. 435. APPLICATION OF INTERNET-BASED TECH-**
16 **NOLOGIES.**

17 (a) ESTABLISHMENT OF TRACKING SYSTEM.—The
18 Attorney General, not later than 1 year after the effective
19 date of this Act, in consultation with the Technology Advi-
20 sory Committee established under subsection (c), shall es-
21 tablish an Internet-based system, that will permit a per-
22 son, employer, immigrant, or nonimmigrant who has fil-
23 ings with the Attorney General for any benefit under the
24 Immigration and Nationality Act (8 U.S.C. 1101 et seq.),
25 access to online information about the processing status
26 of the filing involved.



1 (b) FEASIBILITY STUDY FOR ONLINE FILING AND
2 IMPROVED PROCESSING.—

3 (1) ONLINE FILING.—The Attorney General, in
4 consultation with the Technology Advisory Com-
5 mittee established under subsection (c), shall con-
6 duct a feasibility study on the online filing of the fil-
7 ings described in subsection (a). The study shall in-
8 clude a review of computerization and technology of
9 the Immigration and Naturalization Service relating
10 to the immigration services and processing of filings
11 related to immigrant services. The study shall also
12 include an estimate of the timeframe and cost and
13 shall consider other factors in implementing such a
14 filing system, including the feasibility of fee payment
15 online.

16 (2) REPORT.—A report on the study under this
17 subsection shall be submitted to the Committees on
18 the Judiciary of the United States House of Rep-
19 resentatives and the Senate not later than 1 year
20 after the effective date of this Act.

21 (c) TECHNOLOGY ADVISORY COMMITTEE.—

22 (1) ESTABLISHMENT.—The Attorney General
23 shall establish, not later than 60 days after the ef-
24 fective date of this Act, an advisory committee (in



1 this section referred to as the “Technology Advisory
2 Committee”) to assist the Attorney General in—

3 (A) establishing the tracking system under
4 subsection (a); and

5 (B) conducting the study under subsection
6 (b).

7 The Technology Advisory Committee shall be estab-
8 lished after consultation with the Committees on the
9 Judiciary of the United States House of Representa-
10 tives and the Senate.

11 (2) COMPOSITION.—The Technology Advisory
12 Committee shall be composed of representatives
13 from high technology companies capable of estab-
14 lishing and implementing the system in an expedi-
15 tious manner, and representatives of persons who
16 may use the tracking system described in subsection
17 (a) and the online filing system described in sub-
18 section (b)(1).

19 **SEC. 436. CHILDREN’S AFFAIRS.**

20 (a) TRANSFER OF FUNCTIONS.—There are trans-
21 ferred to the Director of the Office of Refugee Resettle-
22 ment of the Department of Health and Human Services
23 functions under the immigration laws of the United States
24 with respect to the care of unaccompanied alien children
25 that were vested by statute in, or performed by, the Com-



1 missioner of Immigration and Naturalization (or any offi-
2 cer, employee, or component of the Immigration and Nat-
3 uralization Service) immediately before the effective date
4 specified in subsection (d).

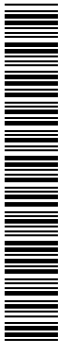
5 (b) FUNCTIONS.—

6 (1) IN GENERAL.—Pursuant to the transfer
7 made by subsection (a), the Director of the Office of
8 Refugee Resettlement shall be responsible for—

9 (A) coordinating and implementing the
10 care and placement of unaccompanied alien
11 children who are in Federal custody by reason
12 of their immigration status, including devel-
13 oping a plan to be submitted to the Congress
14 on how to ensure that qualified and inde-
15 pendent legal counsel is timely appointed to
16 represent the interests of each such child, con-
17 sistent with the law regarding appointment of
18 counsel that is in effect on the date of the en-
19 actment of this Act;

20 (B) ensuring that the interests of the child
21 are considered in decisions and actions relating
22 to the care and custody of an unaccompanied
23 alien child;

24 (C) making placement determinations for
25 all unaccompanied alien children who are in



1 Federal custody by reason of their immigration
2 status;

3 (D) implementing the placement deter-
4 minations;

5 (E) implementing policies with respect to
6 the care and placement of unaccompanied alien
7 children;

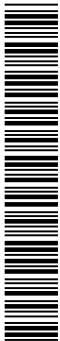
8 (F) identifying a sufficient number of
9 qualified individuals, entities, and facilities to
10 house unaccompanied alien children;

11 (G) overseeing the infrastructure and per-
12 sonnel of facilities in which unaccompanied
13 alien children reside;

14 (H) reuniting unaccompanied alien chil-
15 dren with a parent abroad in appropriate cases;

16 (I) compiling, updating, and publishing at
17 least annually a state-by-state list of profes-
18 sionals or other entities qualified to provide
19 guardian and attorney representation services
20 for unaccompanied alien children;

21 (J) maintaining statistical information and
22 other data on unaccompanied alien children for
23 whose care and placement the Director is re-
24 sponsible, which shall include—



1 (i) biographical information, such as a
2 child's name, gender, date of birth, country
3 of birth, and country of habitual residence;

4 (ii) the date on which the child came
5 into Federal custody by reason of his or
6 her immigration status;

7 (iii) information relating to the child's
8 placement, removal, or release from each
9 facility in which the child has resided;

10 (iv) in any case in which the child is
11 placed in detention or released, an expla-
12 nation relating to the detention or release;
13 and

14 (v) the disposition of any actions in
15 which the child is the subject;

16 (K) collecting and compiling statistical in-
17 formation from the Department of Justice, the
18 Department of Homeland Security, and the De-
19 partment of State on each department's actions
20 relating to unaccompanied alien children; and

21 (L) conducting investigations and inspec-
22 tions of facilities and other entities in which un-
23 accompanied alien children reside.

24 (2) COORDINATION WITH OTHER ENTITIES; NO
25 RELEASE ON OWN RECOGNIZANCE.—In making de-



1 terminations described in paragraph (1)(C), the Di-
2 rector of the Office of Refugee Resettlement—

3 (A) shall consult with appropriate juvenile
4 justice professionals, the Director of the Bureau
5 of Citizenship and Immigration Services of the
6 Department of Justice, and the Assistant Sec-
7 retary of the Bureau of Border Security of the
8 Department of Homeland Security to ensure
9 that such determinations ensure that unaccom-
10 panied alien children described in such
11 subparagraph—

12 (i) are likely to appear for all hearings
13 or proceedings in which they are involved;

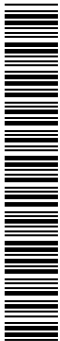
14 (ii) are protected from smugglers,
15 traffickers, or others who might seek to
16 victimize or otherwise engage them in
17 criminal, harmful, or exploitive activity;
18 and

19 (iii) are placed in a setting in which
20 they not likely to pose a danger to them-
21 selves or others; and

22 (B) shall not release such children upon
23 their own recognizance.

24 (3) DUTIES WITH RESPECT TO FOSTER CARE.—

25 In carrying out the duties described in paragraph



1 (1)(G), the Director of the Office of Refugee Reset-
2 tlement is encouraged to use the refugee children
3 foster care system established pursuant to section
4 412(d) of the Immigration and Nationality Act (8
5 U.S.C. 1522(d)) for the placement of unaccom-
6 panied alien children.

7 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion may be construed to transfer the responsibility for
9 adjudicating benefit determinations under the Immigra-
10 tion and Nationality Act (8 U.S.C. 1101 et seq.) from the
11 authority of any official of the Department of Justice, the
12 Department of Homeland Security, or the Department of
13 State.

14 (d) EFFECTIVE DATE.—Notwithstanding section 4,
15 this section shall take effect on the date on which the
16 transfer of functions specified under section 411 takes ef-
17 fect.

18 (e) REFERENCES.—With respect to any function
19 transferred by this section, any reference in any other
20 Federal law, Executive order, rule, regulation, or delega-
21 tion of authority, or any document of or pertaining to a
22 component of government from which such function is
23 transferred—



1 (1) to the head of such component is deemed to
2 refer to the Director of the Office of Refugee Reset-
3 tlement; or

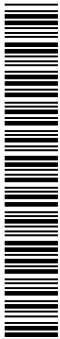
4 (2) to such component is deemed to refer to the
5 Office of Refugee Resettlement of the Department of
6 Health and Human Services.

7 (f) OTHER TRANSITION ISSUES.—

8 (1) EXERCISE OF AUTHORITIES.—Except as
9 otherwise provided by law, a Federal official to
10 whom a function is transferred by this section may,
11 for purposes of performing the function, exercise all
12 authorities under any other provision of law that
13 were available with respect to the performance of
14 that function to the official responsible for the per-
15 formance of the function immediately before the ef-
16 fective date specified in subsection (d).

17 (2) SAVINGS PROVISIONS.—Subsections (a), (b),
18 and (c) of section 812 shall apply to a transfer of
19 functions under this section in the same manner as
20 such provisions apply to a transfer of functions
21 under this Act to the Department of Homeland Se-
22 curity.

23 (3) TRANSFER AND ALLOCATION OF APPRO-
24 PRIATIONS AND PERSONNEL.—The personnel of the
25 Department of Justice employed in connection with



1 the functions transferred by this section, and the as-
2 sets, liabilities, contracts, property, records, and un-
3 expended balance of appropriations, authorizations,
4 allocations, and other funds employed, held, used,
5 arising from, available to, or to be made available to,
6 the Immigration and Naturalization Service in con-
7 nection with the functions transferred by this sec-
8 tion, subject to section 202 of the Budget and Ac-
9 counting Procedures Act of 1950, shall be trans-
10 ferred to the Director of the Office of Refugee Re-
11 settlement for allocation to the appropriate compo-
12 nent of the Department of Health and Human Serv-
13 ices. Unexpended funds transferred pursuant to this
14 paragraph shall be used only for the purposes for
15 which the funds were originally authorized and ap-
16 propriated.

17 (g) DEFINITIONS.—As used in this section—

18 (1) the term “placement” means the placement
19 of an unaccompanied alien child in either a deten-
20 tion facility or an alternative to such a facility; and

21 (2) the term “unaccompanied alien child”
22 means a child who—

23 (A) has no lawful immigration status in
24 the United States;

25 (B) has not attained 18 years of age; and



- 1 (C) with respect to whom—
- 2 (i) there is no parent or legal guard-
- 3 ian in the United States; or
- 4 (ii) no parent or legal guardian in the
- 5 United States is available to provide care
- 6 and physical custody.

7 **CHAPTER 3—GENERAL PROVISIONS**

8 **SEC. 441. ABOLISHMENT OF INS.**

9 The Immigration and Naturalization Service of the

10 Department of Justice is abolished.

11 **SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

12 (a) DEFINITIONS.—For purposes of this section—

13 (1) the term “employee” means an employee

14 (as defined by section 2105 of title 5, United States

15 Code) who—

16 (A) has completed at least 3 years of cur-

17 rent continuous service with 1 or more covered

18 entities; and

19 (B) is serving under an appointment with-

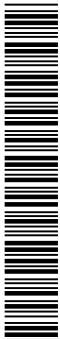
20 out time limitation;

21 but does not include any person under subpara-

22 graphs (A)–(G) of section 663(a)(2) of Public Law

23 104–208 (5 U.S.C. 5597 note);

24 (2) the term “covered entity” means—



1 (A) the Immigration and Naturalization
2 Service;

3 (B) the Bureau of Border Security of the
4 Department of Homeland Security; and

5 (C) the Bureau of Citizenship and Immi-
6 gration Services of the Department of Justice;
7 and

8 (3) the term “transfer date” means the date on
9 which the transfer of functions specified under sec-
10 tion 411 takes effect.

11 (b) STRATEGIC RESTRUCTURING PLAN.—Before the
12 Attorney General or the Secretary obligates any resources
13 for voluntary separation incentive payments under this
14 section, such official shall submit to the appropriate com-
15 mittees of Congress a strategic restructuring plan, which
16 shall include—

17 (1) an organizational chart depicting the cov-
18 ered entities after their restructuring pursuant to
19 this Act;

20 (2) a summary description of how the authority
21 under this section will be used to help carry out that
22 restructuring; and

23 (3) the information specified in section
24 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597
25 note).



1 As used in the preceding sentence, the “appropriate com-
2 mittees of Congress” are the Committees on Appropria-
3 tions, Government Reform, and the Judiciary of the
4 House of Representatives, and the Committees on Appro-
5 priations, Governmental Affairs, and the Judiciary of the
6 Senate.

7 (c) AUTHORITY.—The Attorney General and the Sec-
8 retary may, to the extent necessary to help carry out their
9 respective strategic restructuring plan described in sub-
10 section (b), make voluntary separation incentive payments
11 to employees. Any such payment—

12 (1) shall be paid to the employee, in a lump
13 sum, after the employee has separated from service;

14 (2) shall be paid from appropriations or funds
15 available for the payment of basic pay of the em-
16 ployee;

17 (3) shall be equal to the lesser of—

18 (A) the amount the employee would be en-
19 titled to receive under section 5595(c) of title 5,
20 United States Code; or

21 (B) an amount not to exceed \$25,000, as
22 determined by the Attorney General or the Sec-
23 retary;

24 (4) may not be made except in the case of any
25 qualifying employee who voluntarily separates



1 (whether by retirement or resignation) before the
2 end of—

3 (A) the 3-month period beginning on the
4 date on which such payment is offered or made
5 available to such employee; or

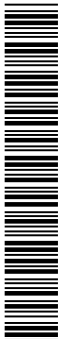
6 (B) the 3-year period beginning on the
7 date of the enactment of this Act,
8 whichever occurs first;

9 (5) shall not be a basis for payment, and shall
10 not be included in the computation, of any other
11 type of Government benefit; and

12 (6) shall not be taken into account in deter-
13 mining the amount of any severance pay to which
14 the employee may be entitled under section 5595 of
15 title 5, United States Code, based on any other sepa-
16 ration.

17 (d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE
18 RETIREMENT FUND.—

19 (1) IN GENERAL.—In addition to any payments
20 which it is otherwise required to make, the Depart-
21 ment of Justice and the Department of Homeland
22 Security shall, for each fiscal year with respect to
23 which it makes any voluntary separation incentive
24 payments under this section, remit to the Office of
25 Personnel Management for deposit in the Treasury



1 of the United States to the credit of the Civil Service
2 Retirement and Disability Fund the amount re-
3 quired under paragraph (2).

4 (2) AMOUNT REQUIRED.—The amount required
5 under this paragraph shall, for any fiscal year, be
6 the amount under subparagraph (A) or (B), which-
7 ever is greater.

8 (A) FIRST METHOD.—The amount under
9 this subparagraph shall, for any fiscal year, be
10 equal to the minimum amount necessary to off-
11 set the additional costs to the retirement sys-
12 tems under title 5, United States Code (payable
13 out of the Civil Service Retirement and Dis-
14 ability Fund) resulting from the voluntary sepa-
15 ration of the employees described in paragraph
16 (3), as determined under regulations of the Of-
17 fice of Personnel Management.

18 (B) SECOND METHOD.—The amount
19 under this subparagraph shall, for any fiscal
20 year, be equal to 45 percent of the sum total
21 of the final basic pay of the employees described
22 in paragraph (3).

23 (3) COMPUTATIONS TO BE BASED ON SEPARA-
24 TIONS OCCURRING IN THE FISCAL YEAR IN-
25 VOLVED.—The employees described in this para-



1 graph are those employees who receive a voluntary
2 separation incentive payment under this section
3 based on their separating from service during the
4 fiscal year with respect to which the payment under
5 this subsection relates.

6 (4) FINAL BASIC PAY DEFINED.—In this sub-
7 section, the term “final basic pay” means, with re-
8 spect to an employee, the total amount of basic pay
9 which would be payable for a year of service by such
10 employee, computed using the employee’s final rate
11 of basic pay, and, if last serving on other than a
12 full-time basis, with appropriate adjustment there-
13 for.

14 (e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH
15 THE GOVERNMENT.—An individual who receives a vol-
16 untary separation incentive payment under this section
17 and who, within 5 years after the date of the separation
18 on which the payment is based, accepts any compensated
19 employment with the Government or works for any agency
20 of the Government through a personal services contract,
21 shall be required to pay, prior to the individual’s first day
22 of employment, the entire amount of the incentive pay-
23 ment. Such payment shall be made to the covered entity
24 from which the individual separated or, if made on or after
25 the transfer date, to the Deputy Attorney General (for



1 transfer to the appropriate component of the Department
2 of Justice, if necessary) or the Under Secretary for Border
3 and Transportation Security (for transfer to the appro-
4 priate component of the Department of Homeland Secu-
5 rity, if necessary).

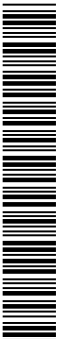
6 (f) EFFECT ON EMPLOYMENT LEVELS.—

7 (1) INTENDED EFFECT.—Voluntary separations
8 under this section are not intended to necessarily re-
9 duce the total number of full-time equivalent posi-
10 tions in any covered entity.

11 (2) USE OF VOLUNTARY SEPARATIONS.—A cov-
12 ered entity may redeploy or use the full-time equiva-
13 lent positions vacated by voluntary separations
14 under this section to make other positions available
15 to more critical locations or more critical occupa-
16 tions.

17 **SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION**
18 **PROJECT RELATING TO DISCIPLINARY AC-**
19 **TION.**

20 (a) IN GENERAL.—The Attorney General and the
21 Secretary may each, during a period ending not later than
22 5 years after the date of the enactment of this Act, con-
23 duct a demonstration project for the purpose of deter-
24 mining whether one or more changes in the policies or pro-



1 cedures relating to methods for disciplining employees
2 would result in improved personnel management.

3 (b) SCOPE.—A demonstration project under this
4 section—

5 (1) may not cover any employees apart from
6 those employed in or under a covered entity; and

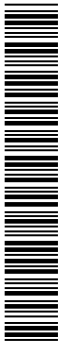
7 (2) shall not be limited by any provision of
8 chapter 43, 75, or 77 of title 5, United States Code.

9 (c) PROCEDURES.—Under the demonstration
10 project—

11 (1) the use of alternative means of dispute reso-
12 lution (as defined in section 571 of title 5, United
13 States Code) shall be encouraged, whenever appro-
14 priate; and

15 (2) each covered entity under the jurisdiction of
16 the official conducting the project shall be required
17 to provide for the expeditious, fair, and independent
18 review of any action to which section 4303 or sub-
19 chapter II of chapter 75 of such title 5 would other-
20 wise apply (except an action described in section
21 7512(5) thereof).

22 (d) ACTIONS INVOLVING DISCRIMINATION.—Not-
23 withstanding any other provision of this section, if, in the
24 case of any matter described in section 7702(a)(1)(B) of
25 title 5, United States Code, there is no judicially review-



1 able action under the demonstration project within 120
2 days after the filing of an appeal or other formal request
3 for review (referred to in subsection (c)(2)), an employee
4 shall be entitled to file a civil action to the same extent
5 and in the same manner as provided in section 7702(e)(1)
6 of such title 5 (in the matter following subparagraph (C)
7 thereof).

8 (e) CERTAIN EMPLOYEES.—Employees shall not be
9 included within any project under this section if such em-
10 ployees are—

11 (1) neither managers nor supervisors; and

12 (2) within a unit with respect to which a labor
13 organization is accorded exclusive recognition under
14 chapter 71 of title 5, United States Code.

15 Notwithstanding the preceding sentence, an aggrieved em-
16 ployee within a unit (referred to in paragraph (2)) may
17 elect to participate in a complaint procedure developed
18 under the demonstration project in lieu of any negotiated
19 grievance procedure and any statutory procedure (as such
20 term is used in section 7121 of such title 5).

21 (f) REPORTS.—The General Accounting Office shall
22 prepare and submit to the Committees on Government Re-
23 form and the Judiciary of the House of Representatives
24 and the Committees on Governmental Affairs and the Ju-
25 diciary of the Senate periodic reports on any demonstra-



tion project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term “covered entity” has the meaning given such term in section 442(a)(2).

SEC. 444. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the missions of the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services of the Department of Justice are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 445. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States



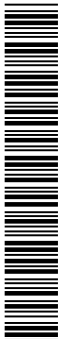
1 House of Representatives and of the Senate a report on
2 the proposed division and transfer of funds, including un-
3 expended funds, appropriations, and fees, between the Bu-
4 reau of Citizenship and Immigration Services and the Bu-
5 reau of Border Security.

6 (b) DIVISION OF PERSONNEL.—The Attorney Gen-
7 eral and the Secretary, not later than 120 days after the
8 effective date of this Act, shall each submit to the Commit-
9 tees on Appropriations and the Judiciary of the United
10 States House of Representatives and of the Senate a re-
11 port on the proposed division of personnel between the Bu-
12 reau of Citizenship and Immigration Services and the Bu-
13 reau of Border Security.

14 (c) IMPLEMENTATION PLAN.—

15 (1) IN GENERAL.—The Attorney General and
16 the Secretary, not later than 120 days after the ef-
17 fective date of this Act, and every 6 months there-
18 after until the termination of fiscal year 2005, shall
19 each submit to the Committees on Appropriations
20 and the Judiciary of the United States House of
21 Representatives and of the Senate an implementa-
22 tion plan to carry out this Act.

23 (2) CONTENTS.—The implementation plan
24 should include details concerning the separation of
25 the Bureau of Citizenship and Immigration Services



1 and the Bureau of Border Security, including the
2 following:

3 (A) Organizational structure, including the
4 field structure.

5 (B) Chain of command.

6 (C) Procedures for interaction among such
7 bureaus.

8 (D) Fraud detection and investigation.

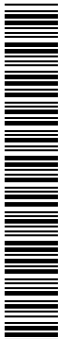
9 (E) The processing and handling of re-
10 moval proceedings, including expedited removal
11 and applications for relief from removal.

12 (F) Recommendations for conforming
13 amendments to the Immigration and Nation-
14 ality Act (8 U.S.C. 1101 et seq.).

15 (G) Establishment of a transition team.

16 (H) Methods to phase in the costs of sepa-
17 rating the administrative support systems of
18 the Immigration and Naturalization Service in
19 order to provide for separate administrative
20 support systems for the Bureau of Citizenship
21 and Immigration Services and the Bureau of
22 Border Security.

23 (d) COMPTROLLER GENERAL STUDIES AND RE-
24 PORTS.—



1 (1) STATUS REPORTS ON TRANSITION.—Not
2 later than 18 months after the date on which the
3 transfer of functions specified under section 411
4 takes effect, and every 6 months thereafter, until
5 full implementation of this subtitle has been com-
6 pleted, the Comptroller General of the United States
7 shall submit to the Committees on Appropriations
8 and on the Judiciary of the United States House of
9 Representatives and the Senate a report containing
10 the following:

11 (A) A determination of whether the trans-
12 fers of functions made by chapters 1 and 2
13 have been completed, and if a transfer of func-
14 tions has not taken place, identifying the rea-
15 sons why the transfer has not taken place.

16 (B) If the transfers of functions made by
17 chapters 1 and 2 have been completed, an iden-
18 tification of any issues that have arisen due to
19 the completed transfers.

20 (C) An identification of any issues that
21 may arise due to any future transfer of func-
22 tions.

23 (2) REPORT ON MANAGEMENT.—Not later than
24 4 years after the date on which the transfer of func-
25 tions specified under section 411 takes effect, the



1 Comptroller General of the United States shall sub-
2 mit to the Committees on Appropriations and on the
3 Judiciary of the United States House of Representa-
4 tives and the Senate a report, following a study, con-
5 taining the following:

6 (A) Determinations of whether the transfer
7 of functions from the Immigration and Natu-
8 ralization Service to the Bureau of Citizenship
9 and Immigration Services and the Bureau of
10 Border Security have improved, with respect to
11 each function transferred, the following:

12 (i) Operations.

13 (ii) Management, including account-
14 ability and communication.

15 (iii) Financial administration.

16 (iv) Recordkeeping, including informa-
17 tion management and technology.

18 (B) A statement of the reasons for the de-
19 terminations under subparagraph (A).

20 (C) Any recommendations for further im-
21 provements to the Bureau of Citizenship and
22 Immigration Services and the Bureau of Border
23 Security.

24 (3) REPORT ON FEES.—Not later than 1 year
25 after the date of the enactment of this Act, the



1 Comptroller General of the United States shall sub-
2 mit to the Committees on the Judiciary of the
3 House of Representatives and of the Senate a report
4 examining whether the Bureau of Citizenship and
5 Immigration Services is likely to derive sufficient
6 funds from fees to carry out its functions in the ab-
7 sence of appropriated funds.

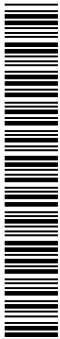
8 **SEC. 446. IMMIGRATION FUNCTIONS.**

9 (a) ANNUAL REPORT.—

10 (1) IN GENERAL.—One year after the date of
11 the enactment of this Act, and each year thereafter,
12 the Attorney General shall submit a report to the
13 President, to the Committees on the Judiciary and
14 Government Reform of the United States House of
15 Representatives, and to the Committees on the Judi-
16 ciary and Government Affairs of the Senate, on the
17 impact the transfers made by this subtitle has had
18 on immigration functions.

19 (2) MATTER INCLUDED.—The report shall ad-
20 dress the following with respect to the period cov-
21 ered by the report:

22 (A) The aggregate number of all immigra-
23 tion applications and petitions received, and
24 processed, by the Department;



1 (B) Region-by-region statistics on the ag-
2 gregate number of immigration applications and
3 petitions filed by an alien (or filed on behalf of
4 an alien) and denied, disaggregated by category
5 of denial and application or petition type.

6 (C) The quantity of backlogged immigra-
7 tion applications and petitions that have been
8 processed, the aggregate number awaiting proc-
9 essing, and a detailed plan for eliminating the
10 backlog.

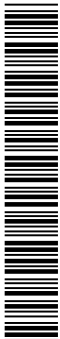
11 (D) The average processing period for im-
12 migration applications and petitions,
13 disaggregated by application or petition type.

14 (E) The number and types of immigration-
15 related grievances filed with any official of the
16 Department of Justice, and if those grievances
17 were resolved.

18 (F) Plans to address grievances and im-
19 prove immigration services.

20 (G) Whether immigration-related fees were
21 used consistent with legal requirements regard-
22 ing such use.

23 (H) Whether immigration-related questions
24 conveyed by customers to the Department of
25 Justice (whether conveyed in person, by tele-



1 phone, or by means of the Internet) were an-
2 swered effectively and efficiently.

3 (b) SENSE OF THE CONGRESS REGARDING IMMIGRA-
4 TION SERVICES.—It is the sense of the Congress that—

5 (1) the quality and efficiency of immigration
6 services rendered by the Federal Government should
7 be improved after the transfers made by this subtitle
8 take effect; and

9 (2) the Attorney General should undertake ef-
10 forts to guarantee that concerns regarding the qual-
11 ity and efficiency of immigration services are ad-
12 dressed after such effective date.

13 **Subtitle C—United States Customs**
14 **Service**

15 **SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.**

16 (a) ESTABLISHMENT.—There is established in the
17 Department the United States Customs Service, under the
18 authority of the Under Secretary for Border and Trans-
19 portation Security, which shall be vested with those func-
20 tions set forth in section 457(7), and the personnel, assets,
21 and liabilities attributable to those functions.

22 (b) COMMISSIONER OF CUSTOMS.—

23 (1) IN GENERAL.—There shall be at the head
24 of the Customs Service a Commissioner of Customs,



1 who shall be appointed by the President, by and
2 with the advice and consent of the Senate.

3 (2) COMPENSATION.—Section 5314 of title 5,
4 United States Code, is amended by striking
5 “Commissioner of Customs, Department of the
6 Treasury”

7 and inserting

8 “Commissioner of Customs, Department of
9 Homeland Security.”.

10 (3) CONTINUATION IN OFFICE.—The individual
11 serving as the Commissioner of Customs on the day
12 before the effective date of this Act may serve as the
13 Commissioner of Customs on and after such effec-
14 tive date until a Commissioner of Customs is ap-
15 pointed under paragraph (1).

16 **SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS**
17 **BY SECRETARY OF THE TREASURY.**

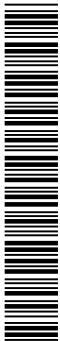
18 (a) RETENTION BY SECRETARY OF THE TREAS-
19 URY.—

20 (1) RETENTION OF AUTHORITY.—Notwith-
21 standing sections 401(5), 402(1), and 808(e)(2), au-
22 thority that was vested in the Secretary of the
23 Treasury by law before the effective date of this Act
24 under those provisions of law set forth in paragraph
25 (2) shall not be transferred to the Secretary by rea-



1 son of this Act, and on and after the effective date
2 of this Act, the Secretary of the Treasury may dele-
3 gate any such authority to the Secretary at the dis-
4 cretion of the Secretary of the Treasury. The Sec-
5 retary of the Treasury shall consult with the Sec-
6 retary regarding the exercise of any such authority
7 not delegated to the Secretary.

8 (2) STATUTES.—The provisions of law referred
9 to in paragraph (1) are the following: the Tariff Act
10 of 1930; section 249 of the Revised Statutes of the
11 United States (19 U.S.C. 3); section 2 of the Act of
12 March 4, 1923 (19 U.S.C. 6); section 13031 of the
13 Consolidated Omnibus Budget Reconciliation Act of
14 1985 (19 U.S.C. 58c); section 251 of the Revised
15 Statutes of the United States (19 U.S.C. 66); sec-
16 tion 1 of the Act of June 26, 1930 (19 U.S.C. 68);
17 the Foreign Trade Zones Act (19 U.S.C. 81a et
18 seq.); section 1 of the Act of March 2, 1911 (19
19 U.S.C. 198); the Trade Act of 1974; the Trade
20 Agreements Act of 1979; the North American Free
21 Trade Area Implementation Act; the Uruguay
22 Round Agreements Act; the Caribbean Basin Eco-
23 nomic Recovery Act; the Andean Trade Preference
24 Act; the African Growth and Opportunity Act; and

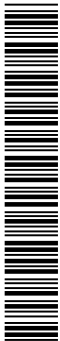


1 any other provision of law vesting customs revenue
2 functions in the Secretary of the Treasury.

3 (b) MAINTENANCE OF CUSTOMS REVENUE FUNC-
4 TIONS.—

5 (1) MAINTENANCE OF FUNCTIONS.—Notwith-
6 standing any other provision of this Act, the Sec-
7 retary may not consolidate, alter, discontinue, or di-
8 minish those functions described in paragraph (2)
9 performed by the United States Customs Service (as
10 established under section 451) on or after the effec-
11 tive date of this Act, reduce the staffing level, or the
12 compensation or benefits under title 5, United
13 States Code, of personnel attributable to such func-
14 tions, or reduce the resources attributable to such
15 functions, and the Secretary shall ensure that an ap-
16 propriate management structure is implemented to
17 carry out such functions.

18 (2) FUNCTIONS.—The functions referred to in
19 paragraph (1) are those functions performed by the
20 following personnel, and associated support staff, of
21 the United States Customs Service on the day before
22 the effective date of this Act: Import Specialists,
23 Entry Specialists, Drawback Specialists, National
24 Import Specialist, Fines and Penalties Specialists,
25 attorneys of the Office of Regulations and Rulings,



1 Customs Auditors, International Trade Specialists,
2 Financial Systems Specialists.

3 (c) NEW PERSONNEL.—The Secretary of the Treas-
4 ury is authorized to appoint up to 20 new personnel to
5 work with personnel of the Department in performing cus-
6 toms revenue functions.

7 **SEC. 453. ESTABLISHMENT AND IMPLEMENTATION OF**
8 **COST ACCOUNTING SYSTEM; REPORTS.**

9 (a) ESTABLISHMENT AND IMPLEMENTATION.—

10 (1) IN GENERAL.—Not later than September
11 30, 2003, the Commissioner of Customs shall, in ac-
12 cordance with the audit of the Customs Service's fis-
13 cal years 2000 and 1999 financial statements (as
14 contained in the report of the Office of the Inspector
15 General of the Department of the Treasury issued
16 on February 23, 2001), establish and implement a
17 cost accounting system for expenses incurred in the
18 operation of the Customs Service.

19 (2) ADDITIONAL REQUIREMENT.—The cost ac-
20 counting system described in paragraph (1) shall
21 provide for an identification of expenses based on
22 the type of operation, the port at which the oper-
23 ation took place, the amount of time spent on the
24 operation by personnel of the Customs Service, and
25 an identification of expenses based on any other ap-



1 appropriate classification necessary to provide for an
2 accurate and complete accounting of the expenses.

3 (3) USE OF MERCHANDISE PROCESSING
4 FEES.—The cost accounting system described in
5 paragraph (1) shall provide for an identification of
6 all amounts expended pursuant to section
7 13031(f)(2) of the Consolidated Omnibus Budget
8 Reconciliation Act of 1985.

9 (b) REPORTS.—Beginning on the date of the enact-
10 ment of this Act and ending on the date on which the
11 cost accounting system described in subsection (a) is fully
12 implemented, the Commissioner of Customs shall prepare
13 and submit to the Committee on Ways and Means of the
14 House of Representatives and the Committee on Finance
15 of the Senate on a quarterly basis a report on the progress
16 of implementing the cost accounting system pursuant to
17 subsection (a).

18 **SEC. 454. PRESERVATION OF CUSTOMS FUNDS.**

19 Notwithstanding any other provision of this Act, no
20 funds available to the United States Customs Service or
21 collected under paragraphs (1) through (8) of section
22 13031(a) of the Consolidated Omnibus Budget Reconcili-
23 ation Act of 1985 may be transferred for use by any other
24 agency or office in the Department.



1 **SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

2 The President shall include in each budget trans-
3 mitted to the Congress under section 1105 of title 31,
4 United States Code, a separate budget request for the
5 United States Customs Service.

6 **SEC. 456. PAYMENT OF DUTIES AND FEES.**

7 Section 505(a) of the Tariff Act of 1930 (19 U.S.C.
8 1505(a)) is amended—

9 (1) in the first sentence—

10 (A) by striking “Unless the merchandise”
11 and inserting “Unless the entry of merchandise
12 is covered by an import activity summary state-
13 ment, or the merchandise”; and

14 (B) by inserting after “by regulation” the
15 following: “(but not to exceed 10 working days
16 after entry or release, whichever occurs first)”;
17 and

18 (2) by striking the second and third sentences
19 and inserting the following: “If an import activity
20 summary statement is filed, the importer of record
21 shall deposit estimated duties and fees for entries of
22 merchandise covered by the import activity summary
23 statement no later than the 15th day of the month
24 following the month in which the merchandise is en-
25 tered or released, whichever occurs first.”.



1 **SEC. 457. DEFINITION.**

2 In this subtitle, the term “customs revenue function”
3 means the following:

4 (1) Assessing and collecting customs duties (in-
5 cluding antidumping and countervailing duties and
6 duties imposed under safeguard provisions), excise
7 taxes, fees, and penalties due on imported merchan-
8 dise, including classifying and valuing merchandise
9 for purposes of such assessment.

10 (2) Processing and denial of entry of persons,
11 baggage, cargo, and mail, with respect to the assess-
12 ment and collection of import duties.

13 (3) Detecting and apprehending persons en-
14 gaged in fraudulent practices designed to circumvent
15 the customs laws of the United States.

16 (4) Enforcing section 337 of the Tariff Act of
17 1930 and provisions relating to import quotas and
18 the marking of imported merchandise, and providing
19 Customs Recordations for copyrights, patents, and
20 trademarks.

21 (5) Collecting accurate import data for compila-
22 tion of international trade statistics.

23 (6) Enforcing reciprocal trade agreements.

24 (7) Functions performed by the following per-
25 sonnel, and associated support staff, of the United
26 States Customs Service on the day before the effec-



1 tive date of this Act: Import Specialists, Entry Spe-
2 cialists, Drawback Specialists, National Import Spe-
3 cialist, Fines and Penalties Specialists, attorneys of
4 the Office of Regulations and Rulings, Customs
5 Auditors, International Trade Specialists, Financial
6 Systems Specialists.

7 (8) Functions performed by the following of-
8 fices, with respect to any function described in any
9 of paragraphs (1) through (7), and associated sup-
10 port staff, of the United States Customs Service on
11 the day before the effective date of this Act: the Of-
12 fice of Information and Technology, the Office of
13 Laboratory Services, the Office of the Chief Counsel,
14 the Office of Congressional Affairs, the Office of
15 International Affairs, and the Office of Training and
16 Development.

17 **SEC. 458. GAO REPORT TO CONGRESS.**

18 Not later than 3 months after the effective date of
19 this Act, the Comptroller General of the United States
20 shall submit to the Congress a report that sets forth all
21 trade functions performed by the executive branch, speci-
22 fying each agency that performs each such function.

23 **SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.**

24 (a) IN GENERAL.—The Secretary shall ensure that
25 adequate staffing is provided to assure that levels of cus-



1 toms revenue services provided on the day before the effective date of this Act shall continue to be provided.

3 (b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 180 days prior to taking any action which would—

8 (1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

12 (2) eliminate or relocate any office of the Department which provides customs revenue services; or

15 (3) eliminate any port of entry.

16 (c) DEFINITION.—In this section, the term “customs revenue services” means those customs revenue functions described in paragraphs (1) through (6) and (8) of section 457.

20 **SEC. 460. REPORTS TO CONGRESS.**

21 The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective



1 date of this Act, to be so submitted under any provision
2 of law.

3 **SEC. 461. CUSTOMS USER FEES.**

4 Section 13031(f) of the Consolidated Omnibus Budg-
5 et Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is
6 amended—

7 (1) in paragraph (1), by striking subparagraph
8 (B) and inserting the following:

9 “(B) amounts deposited into the Customs Com-
10 mercial and Homeland Security Automation Account
11 under paragraph (5).”;

12 (2) in paragraph (4), by striking “(other than
13 the excess fees determined by the Secretary under
14 paragraph (5))”; and

15 (3) by striking paragraph (5) and inserting the
16 following:

17 “(5)(A) There is created within the general fund of
18 the Treasury a separate account that shall be known as
19 the ‘Customs Commercial and Homeland Security Auto-
20 mation Account’. In each of fiscal years 2003, 2004, and
21 2005 there shall be deposited into the Account from fees
22 collected under subsection (a)(9)(A), \$350,000,000.

23 “(B) There is authorized to be appropriated from the
24 Account in fiscal years 2003 through 2005 such amounts
25 as are available in that Account for the development, es-



1 tablishment, and implementation of the Automated Com-
2 mercial Environment computer system for the processing
3 of merchandise that is entered or released and for other
4 purposes related to the functions of the Department of
5 Homeland Security. Amounts appropriated pursuant to
6 this subparagraph are authorized to remain available until
7 expended.

8 “(C) In adjusting the fee imposed by subsection
9 (a)(9)(A) for fiscal year 2006, the Secretary of the Treas-
10 ury shall reduce the amount estimated to be collected in
11 fiscal year 2006 by the amount by which total fees depos-
12 ited to the Account during fiscal years 2003, 2004, and
13 2005 exceed total appropriations from that Account.”.

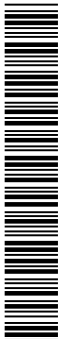
14 **TITLE V—EMERGENCY**
15 **PREPAREDNESS AND RESPONSE**

16 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-**
17 **NESS AND RESPONSE.**

18 The Secretary, acting through the Under Secretary
19 for Emergency Preparedness and Response, shall be re-
20 sponsible for the following:

21 (1) Helping to ensure the preparedness of
22 emergency response providers for terrorist attacks,
23 major disasters, and other emergencies.

24 (2) With respect to the Nuclear Incident Re-
25 sponse Team (regardless of whether it is operating



1 as an organizational unit of the Department pursu-
2 ant to this title)—

3 (A) establishing standards and certifying
4 when those standards have been met;

5 (B) conducting joint and other exercises
6 and training and evaluating performance; and

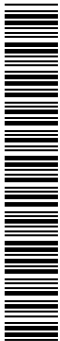
7 (C) providing funds to the Department of
8 Energy and the Environmental Protection
9 Agency, as appropriate, for homeland security
10 planning, exercises and training, and equip-
11 ment.

12 (3) Providing the Federal Government's re-
13 sponse to terrorist attacks and major disasters,
14 including—

15 (A) managing such response;

16 (B) directing the Domestic Emergency
17 Support Team, the Strategic National Stock-
18 pile, the National Disaster Medical System, and
19 (when operating as an organizational unit of
20 the Department pursuant to this title) the Nu-
21 clear Incident Response Team;

22 (C) overseeing the Metropolitan Medical
23 Response System; and



1 (D) coordinating other Federal response
2 resources in the event of a terrorist attack or
3 major disaster.

4 (4) Aiding the recovery from terrorist attacks
5 and major disasters, interventions to treat the psy-
6 chological consequences of terrorist attacks or major
7 disasters and provision for training for mental
8 health workers to allow them to respond effectively
9 to such attacks or disasters.

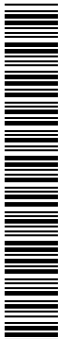
10 (5) Building a comprehensive national incident
11 management system with Federal, State, and local
12 government personnel, agencies, and authorities, to
13 respond to such attacks and disasters.

14 (6) Consolidating existing Federal Government
15 emergency response plans into a single, coordinated
16 national response plan.

17 (7) Developing comprehensive programs for de-
18 veloping interoperative communications technology,
19 and helping to ensure that emergency response pro-
20 viders acquire such technology.

21 **SEC. 502. FUNCTIONS TRANSFERRED.**

22 In accordance with title VIII, there shall be trans-
23 ferred to the Secretary the functions, personnel, assets,
24 and obligations of the following:



1 (1) Except as provided in section 402, the Fed-
2 eral Emergency Management Agency, including the
3 functions of the Director of the Federal Emergency
4 Management Agency relating thereto, and the Inte-
5 grated Hazard Information System of the Depart-
6 ment of Defense.

7 (2) The Office of Emergency Preparedness, the
8 National Disaster Medical System, and the Metro-
9 politan Medical Response System of the Department
10 of Health and Human Services, including the func-
11 tions of the Secretary of Health and Human Serv-
12 ices and the Assistant Secretary for Public Health
13 Emergency Preparedness relating thereto.

14 (3) The Strategic National Stockpile of the De-
15 partment of Health and Human Services, including
16 the functions of the Secretary of Health and Human
17 Services relating thereto.

18 **SEC. 503. NUCLEAR INCIDENT RESPONSE.**

19 (a) NUCLEAR INCIDENT RESPONSE TEAM.—At the
20 direction of the Secretary (in connection with an actual
21 or threatened terrorist attack, major disaster, or other
22 emergency within the United States), the Nuclear Incident
23 Response Team shall operate as an organizational unit of
24 the Department. While so operating, the Nuclear Incident

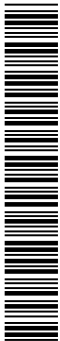


1 Response Team shall be subject to the direction, authority,
2 and control of the Secretary.

3 (b) CONSTRUCTION.—Nothing in this title shall be
4 understood to limit the ordinary responsibility of the Sec-
5 retary of Energy and the Administrator of the Environ-
6 mental Protection Agency for organizing, training, equip-
7 ping, and utilizing their respective entities in the Nuclear
8 Incident Response Team, or (subject to the provisions of
9 this title) from exercising direction, authority, and control
10 over them when they are not operating as a unit of the
11 Department.

12 (c) INDEMNIFICATION OF CONTRACTORS DURING
13 TRANSITION PERIOD.—(1) To the extent the Department
14 of Energy has a duty under a covered contract to indem-
15 nify an element of the Nuclear Incident Response Team,
16 the Department and the Department of Energy shall each
17 have that duty, whether or not the Nuclear Incident Re-
18 sponse Team is operating as an organizational element of
19 the Department.

20 (2) Paragraph (1) applies only to a contract in effect
21 on the date of the enactment of this Act, and not to any
22 extension or renewal of such contract carried out after the
23 date of the enactment of this Act.



1 **SEC. 504. DEFINITION.**

2 For purposes of this title, the term “Nuclear Incident
3 Response Team” means a resource that includes—

4 (1) those entities of the Department of Energy
5 that perform nuclear or radiological emergency sup-
6 port functions (including accident response, search
7 response, advisory, and technical operations func-
8 tions), radiation exposure functions at the medical
9 assistance facility known as the Radiation Emer-
10 gency Assistance/Training Site (REAC/TS), radio-
11 logical assistance functions, and related functions;
12 and

13 (2) those entities of the Environmental Protec-
14 tion Agency that perform radiological emergency re-
15 sponse and support functions.

16 **SEC. 505. CONDUCT OF CERTAIN PUBLIC-HEALTH RELATED**
17 **ACTIVITIES.**

18 (a) IN GENERAL.—With respect to all public health-
19 related activities to improve State, local, and hospital pre-
20 paredness and response to chemical, biological, radio-
21 logical, and nuclear and other emerging terrorist threats
22 carried out by the Department of Health and Human
23 Services (including the Public Health Service), the Sec-
24 retary of Health and Human Services shall set priorities
25 and preparedness goals and further develop a coordinated



1 strategy for such activities in collaboration with the Sec-
2 retary of Homeland Security.

3 (b) EVALUATION OF PROGRESS.—In carrying out
4 subsection (a), the Secretary of Health and Human Serv-
5 ices shall collaborate with the Secretary of Homeland Se-
6 curity in developing specific benchmarks and outcome
7 measurements for evaluating progress toward achieving
8 the priorities and goals described in such subsection.”.

9 **TITLE VI—MANAGEMENT**

10 **SEC. 601. UNDER SECRETARY FOR MANAGEMENT.**

11 (a) IN GENERAL.—The Secretary, acting through the
12 Under Secretary for Management, shall be responsible for
13 the management and administration of the Department,
14 including the following:

15 (1) The budget, appropriations, expenditures of
16 funds, accounting, and finance.

17 (2) Procurement.

18 (3) Human resources and personnel.

19 (4) Information technology and communications
20 systems.

21 (5) Facilities, property, equipment, and other
22 material resources.

23 (6) Security for personnel, information tech-
24 nology and communications systems, facilities, prop-
25 erty, equipment, and other material resources.



1 (7) Identification and tracking of performance
2 measures relating to the responsibilities of the De-
3 partment.

4 (8) Grants and other assistance management
5 programs.

6 (9) The transition and reorganization process,
7 to ensure an efficient and orderly transfer of func-
8 tions and personnel to the Department, including
9 the development of a transition plan.

10 (10) The conduct of internal audits and man-
11 agement analyses of the programs and activities of
12 the Department.

13 (11) Any other management duties that the
14 Secretary may designate.

15 (b) IMMIGRATION ENFORCEMENT.—

16 (1) IN GENERAL.—In addition to the respon-
17 sibilities described in subsection (a), the Under Sec-
18 retary for Management shall be responsible for the
19 following:

20 (A) Maintenance of all immigration statis-
21 tical information of the Bureau of Border Secu-
22 rity. Such statistical information shall include
23 information and statistics of the type contained
24 in the publication entitled “Statistical Yearbook
25 of the Immigration and Naturalization Service”



1 prepared by the Immigration and Naturaliza-
2 tion Service (as in effect immediately before the
3 date on which the transfer of functions specified
4 under section 411 takes effect), including re-
5 gion-by-region statistics on the aggregate num-
6 ber of applications and petitions filed by an
7 alien (or filed on behalf of an alien) and denied
8 by such bureau, and the reasons for such deni-
9 als, disaggregated by category of denial and ap-
10 plication or petition type.

11 (B) Establishment of standards of reli-
12 ability and validity for immigration statistics
13 collected by the Bureau of Border Security.

14 (2) TRANSFER OF FUNCTIONS.—In accordance
15 with title VIII, there shall be transferred to the
16 Under Secretary for Management all functions per-
17 formed immediately before such transfer occurs by
18 the Statistics Branch of the Office of Policy and
19 Planning of the Immigration and Naturalization
20 Service with respect to the following programs:

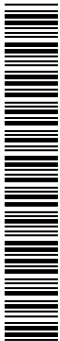
21 (A) The Border Patrol program.

22 (B) The detention and removal program.

23 (C) The intelligence program.

24 (D) The investigations program.

25 (E) The inspections program.



1 **SEC. 602. CHIEF FINANCIAL OFFICER.**

2 Notwithstanding section 902(a)(1) of title 31, United
3 States Code, the Chief Financial Officer shall report to
4 the Secretary, or to another official of the Department,
5 as the Secretary may direct.

6 **SEC. 603. CHIEF INFORMATION OFFICER.**

7 Notwithstanding section 3506(a)(2) of title 44,
8 United States Code, the Chief Information Officer shall
9 report to the Secretary, or to another official of the De-
10 partment, as the Secretary may direct.

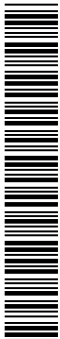
11 **SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS**
12 **AND CIVIL LIBERTIES.**

13 The Secretary shall establish in the Department an
14 Office for Civil Rights and Civil Liberties, the head of
15 which shall be the Director for Civil Rights and Civil Lib-
16 erties. The Director shall—

17 (1) review and assess information alleging
18 abuses of civil rights, civil liberties, and racial and
19 ethnic profiling by employees and officials of the De-
20 partment;

21 (2) make public through the Internet, radio, tel-
22 evision, or newspaper advertisements information on
23 the responsibilities and functions of, and how to con-
24 tact, the Office; and

25 (3) submit to the President of the Senate, the
26 Speaker of the House of Representatives, and the



1 appropriate committees and subcommittees of the
2 Congress on a semiannual basis a report on the im-
3 plementation of this section, including the use of
4 funds appropriated to carry out this section, and de-
5 tailing any allegations of abuses described in para-
6 graph (1) and any actions taken by the Department
7 in response to such allegations.

8 **TITLE VII—MISCELLANEOUS**
9 **Subtitle A—Inspector General**

10 **SEC. 701. AUTHORITY OF THE SECRETARY.**

11 (a) IN GENERAL.—Notwithstanding the last two sen-
12 tences of section 3(a) of the Inspector General Act of
13 1978, the Inspector General shall be under the authority,
14 direction, and control of the Secretary with respect to au-
15 dits or investigations, or the issuance of subpoenas, that
16 require access to sensitive information concerning—

17 (1) intelligence, counterintelligence, or
18 counterterrorism matters;

19 (2) ongoing criminal investigations or pro-
20 ceedings;

21 (3) undercover operations;

22 (4) the identity of confidential sources, includ-
23 ing protected witnesses;

24 (5) other matters the disclosure of which would,
25 in the Secretary's judgment, constitute a serious



1 threat to the protection of any person or property
2 authorized protection by section 3056 of title 18,
3 United States Code, section 202 of title 3 of such
4 Code, or any provision of the Presidential Protection
5 Assistance Act of 1976; or

6 (6) other matters the disclosure of which would,
7 in the Secretary's judgment, constitute a serious
8 threat to national security.

9 (b) PROHIBITION OF CERTAIN INVESTIGATIONS.—

10 With respect to the information described in subsection
11 (a), the Secretary may prohibit the Inspector General
12 from carrying out or completing any audit or investiga-
13 tion, or from issuing any subpoena, after such Inspector
14 General has decided to initiate, carry out, or complete
15 such audit or investigation or to issue such subpoena, if
16 the Secretary determines that such prohibition is nec-
17 essary to prevent the disclosure of any information de-
18 scribed in subsection (a), to preserve the national security,
19 or to prevent a significant impairment to the interests of
20 the United States.

21 (c) NOTIFICATION REQUIRED.—If the Secretary ex-
22 ercises any power under subsection (a) or (b), the Sec-
23 retary shall notify the Inspector General of the Depart-
24 ment in writing stating the reasons for such exercise.
25 Within 30 days after receipt of any such notice, the In-



1 to the Inspector General the significant activities being
2 carried out by such office.”.

3 **Subtitle B—United States Secret**
4 **Service**

5 **SEC. 711. FUNCTIONS TRANSFERRED.**

6 In accordance with title VIII, there shall be trans-
7 ferred to the Secretary the functions, personnel, assets,
8 and obligations of the United States Secret Service, which
9 shall be maintained as a distinct entity within the Depart-
10 ment, including the functions of the Secretary of the
11 Treasury relating thereto.

12 **Subtitle C—Critical Infrastructure**
13 **Information**

14 **SEC. 721. SHORT TITLE.**

15 This subtitle may be cited as the “Critical Infrastruc-
16 ture Information Act of 2002”.

17 **SEC. 722. DEFINITIONS.**

18 In this subtitle:

19 (1) AGENCY.—The term “agency” has the
20 meaning given it in section 551 of title 5, United
21 States Code.

22 (2) COVERED FEDERAL AGENCY.—The term
23 “covered Federal agency” means the Department of
24 Homeland Security.

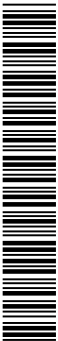


1 (3) CRITICAL INFRASTRUCTURE INFORMA-
2 TION.—The term “critical infrastructure informa-
3 tion” means information not customarily in the pub-
4 lic domain and related to the security of critical in-
5 frastructure or protected systems—

6 (A) actual, potential, or threatened inter-
7 ference with, attack on, compromise of, or inca-
8 pacitation of critical infrastructure or protected
9 systems by either physical or computer-based
10 attack or other similar conduct (including the
11 misuse of or unauthorized access to all types of
12 communications and data transmission systems)
13 that violates Federal, State, or local law, harms
14 interstate commerce of the United States, or
15 threatens public health or safety;

16 (B) the ability of any critical infrastruc-
17 ture or protected system to resist such inter-
18 ference, compromise, or incapacitation, includ-
19 ing any planned or past assessment, projection,
20 or estimate of the vulnerability of critical infra-
21 structure or a protected system, including secu-
22 rity testing, risk evaluation thereto, risk man-
23 agement planning, or risk audit; or

24 (C) any planned or past operational prob-
25 lem or solution regarding critical infrastructure



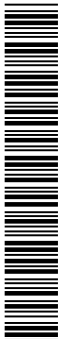
1 or protected systems, including repair, recovery,
2 reconstruction, insurance, or continuity, to the
3 extent it is related to such interference, com-
4 promise, or incapacitation.

5 (4) CRITICAL INFRASTRUCTURE PROTECTION
6 PROGRAM.—The term “critical infrastructure protec-
7 tion program” means any component or bureau of a
8 covered Federal agency that has been designated by
9 the President or any agency head to receive critical
10 infrastructure information.

11 (5) INFORMATION SHARING AND ANALYSIS OR-
12 GANIZATION.—The term “Information Sharing and
13 Analysis Organization” means any formal or infor-
14 mal entity or collaboration created or employed by
15 public or private sector organizations, for purposes
16 of—

17 (A) gathering and analyzing critical infra-
18 structure information in order to better under-
19 stand security problems and interdependencies
20 related to critical infrastructure and protected
21 systems, so as to ensure the availability, integ-
22 rity, and reliability thereof;

23 (B) communicating or disclosing critical
24 infrastructure information to help prevent, de-
25 tect, mitigate, or recover from the effects of a



1 interference, compromise, or a incapacitation
2 problem related to critical infrastructure or pro-
3 tected systems; and

4 (C) voluntarily disseminating critical infra-
5 structure information to its members, State,
6 local, and Federal Governments, or any other
7 entities that may be of assistance in carrying
8 out the purposes specified in subparagraphs (A)
9 and (B).

10 (6) PROTECTED SYSTEM.—The term “protected
11 system”—

12 (A) means any service, physical or com-
13 puter-based system, process, or procedure that
14 directly or indirectly affects the viability of a fa-
15 cility of critical infrastructure; and

16 (B) includes any physical or computer-
17 based system, including a computer, computer
18 system, computer or communications network,
19 or any component hardware or element thereof,
20 software program, processing instructions, or
21 information or data in transmission or storage
22 therein, irrespective of the medium of trans-
23 mission or storage.

24 (7) VOLUNTARY.—

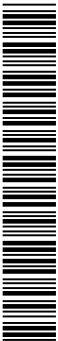


1 (A) IN GENERAL.—The term “voluntary”,
2 in the case of any submittal of critical infra-
3 structure information to a covered Federal
4 agency, means the submittal thereof in the ab-
5 sence of such agency’s exercise of legal author-
6 ity to compel access to or submission of such
7 information and may be accomplished by a sin-
8 gle entity or an Information Sharing and Anal-
9 ysis Organization on behalf of itself or its mem-
10 bers.

11 (B) EXCLUSIONS.—The term
12 “voluntary”—

13 (i) in the case of any action brought
14 under the securities laws as is defined in
15 section 3(a)(47) of the Securities Ex-
16 change Act of 1934 (15 U.S.C.
17 78c(a)(47))—

18 (I) does not include information
19 or statements contained in any docu-
20 ments or materials filed with the Se-
21 curities and Exchange Commission, or
22 with Federal banking regulators, pur-
23 suant to section 12(i) of the Securities
24 Exchange Act of 1934 (15 U.S.C.
25 781(I)); and



1 (II) with respect to the submittal
2 of critical infrastructure information,
3 does not include any disclosure or
4 writing that when made accompanied
5 the solicitation of an offer or a sale of
6 securities; and

7 (ii) does not include information or
8 statements submitted or relied upon as a
9 basis for making licensing or permitting
10 determinations, or during regulatory pro-
11 ceedings.

12 **SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE**
13 **PROTECTION PROGRAM.**

14 A critical infrastructure protection program may be
15 designated as such by one of the following:

16 (1) The President.

17 (2) The Secretary of Homeland Security.

18 **SEC. 724. PROTECTION OF VOLUNTARILY SHARED CRIT-**
19 **ICAL INFRASTRUCTURE INFORMATION.**

20 (a) PROTECTION.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of law, critical infrastructure information
23 (including the identity of the submitting person or
24 entity) that is voluntarily submitted to a covered
25 Federal agency for use by that agency regarding the



1 security of critical infrastructure and protected sys-
2 tems, if analysis, warning, interdependency study,
3 recovery, reconstitution, or other informational pur-
4 pose, when accompanied by an express statement
5 specified in paragraph (2)—

6 (A) shall be exempt from disclosure under
7 section 552 of title 5, United States Code (com-
8 monly referred to as the Freedom of Informa-
9 tion Act);

10 (B) shall not be subject to any agency
11 rules or judicial doctrine regarding ex parte
12 communications with a decision making official;

13 (C) shall not, without the written consent
14 of the person or entity submitting such infor-
15 mation, be used directly by such agency, any
16 other Federal, State, or local authority, or any
17 third party, in any civil action arising under
18 Federal or State law if such information is sub-
19 mitted in good faith;

20 (D) shall not, without the written consent
21 of the person or entity submitting such infor-
22 mation, be used or disclosed by any officer or
23 employee of the United States for purposes
24 other than the purposes of this subtitle,
25 except—



1 (i) in furtherance of an investigation
2 or the prosecution of a criminal act; or

3 (ii) when disclosure of the information
4 would be—

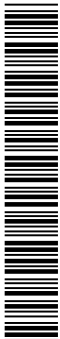
5 (I) to either House of Congress,
6 or to the extent of matter within its
7 jurisdiction, any committee or sub-
8 committee thereof, any joint com-
9 mittee thereof or subcommittee of any
10 such joint committee; or

11 (II) to the Comptroller General,
12 or any authorized representative of
13 the Comptroller General, in the course
14 of the performance of the duties of
15 the General Accounting Office.

16 (E) shall not, if provided to a State or
17 local government or government agency—

18 (i) be made available pursuant to any
19 State or local law requiring disclosure of
20 information or records;

21 (ii) otherwise be disclosed or distrib-
22 uted to any party by said State or local
23 government or government agency without
24 the written consent of the person or entity
25 submitting such information; or



1 (iii) be used other than for the pur-
2 pose of protecting critical infrastructure or
3 protected systems, or in furtherance of an
4 investigation or the prosecution of a crimi-
5 nal act; and

6 (F) does not constitute a waiver of any ap-
7 plicable privilege or protection provided under
8 law, such as trade secret protection.

9 (2) EXPRESS STATEMENT.—For purposes of
10 paragraph (1), the term “express statement”, with
11 respect to information or records, means—

12 (A) in the case of written information or
13 records, a written marking on the information
14 or records substantially similar to the following:
15 “This information is voluntarily submitted to
16 the Federal Government in expectation of pro-
17 tection from disclosure as provided by the provi-
18 sions of the Critical Infrastructure Information
19 Act of 2002.”; or

20 (B) in the case of oral information, a simi-
21 lar written statement submitted within a rea-
22 sonable period following the oral communica-
23 tion.

24 (b) LIMITATION.—No communication of critical in-
25 frastructure information to a covered Federal agency



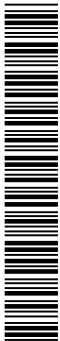
1 made pursuant to this subtitle shall be considered to be
2 an action subject to the requirements of the Federal Advi-
3 sory Committee Act (5 U.S.C. App. 2).

4 (c) INDEPENDENTLY OBTAINED INFORMATION.—
5 Nothing in this section shall be construed to limit or other-
6 wise affect the ability of a State, local, or Federal Govern-
7 ment entity, agency, or authority, or any third party,
8 under applicable law, to obtain critical infrastructure in-
9 formation in a manner not covered by subsection (a), in-
10 cluding any information lawfully and properly disclosed
11 generally or broadly to the public and to use such informa-
12 tion in any manner permitted by law.

13 (d) TREATMENT OF VOLUNTARY SUBMITTAL OF IN-
14 FORMATION.—The voluntary submittal to the Government
15 of information or records that are protected from disclo-
16 sure by this subtitle shall not be construed to constitute
17 compliance with any requirement to submit such informa-
18 tion to a Federal agency under any other provision of law.

19 (e) PROCEDURES.—

20 (1) IN GENERAL.—The Secretary of the De-
21 partment of Homeland Security shall, in consulta-
22 tion with appropriate representatives of the National
23 Security Council and the Office of Science and Tech-
24 nology Policy, establish uniform procedures for the
25 receipt, care, and storage by Federal agencies of



1 critical infrastructure information that is voluntarily
2 submitted to the Government. The procedures shall
3 be established not later than 90 days after the date
4 of the enactment of this subtitle.

5 (2) ELEMENTS.—The procedures established
6 under paragraph (1) shall include mechanisms
7 regarding—

8 (A) the acknowledgement of receipt by
9 Federal agencies of critical infrastructure infor-
10 mation that is voluntarily submitted to the Gov-
11 ernment;

12 (B) the maintenance of the identification
13 of such information as voluntarily submitted to
14 the Government for purposes of and subject to
15 the provisions of this subtitle;

16 (C) the care and storage of such informa-
17 tion; and

18 (D) the protection and maintenance of the
19 confidentiality of such information so as to per-
20 mit the sharing of such information within the
21 Federal Government and with State and local
22 governments, and the issuance of notices and
23 warnings related to the protection of critical in-
24 frastructure and protected systems, in such
25 manner as to protect from public disclosure the



1 identity of the submitting person or entity, or
2 information that is proprietary, business sen-
3 sitive, relates specifically to the submitting per-
4 son or entity, and is otherwise not appropriately
5 in the public domain.

6 (f) PENALTIES.—Whoever, being an officer or em-
7 ployee of the United States or of any department or agen-
8 cy thereof, knowingly publishes, divulges, discloses, or
9 makes known in any manner or to any extent not author-
10 ized by law, any critical infrastructure information pro-
11 tected from disclosure by this subtitle coming to him in
12 the course of this employment or official duties or by rea-
13 son of any examination or investigation made by, or re-
14 turn, report, or record made to or filed with, such depart-
15 ment or agency or officer or employee thereof, shall be
16 fined under title 18 of the United States Code, imprisoned
17 not more than one year, or both, and shall be removed
18 from office or employment.

19 (g) AUTHORITY TO ISSUE WARNINGS.—The Federal
20 Government may provide advisories, alerts, and warnings
21 to relevant companies, targeted sectors, other govern-
22 mental entities, or the general public regarding potential
23 threats to critical infrastructure as appropriate. In issuing
24 a warning, the Federal Government shall take appropriate
25 actions to protect from disclosure—



1 (1) the source of any voluntarily submitted crit-
2 ical infrastructure information that forms the basis
3 for the warning; or

4 (2) information that is proprietary, business
5 sensitive, relates specifically to the submitting per-
6 son or entity, or is otherwise not appropriately in
7 the public domain.

8 (h) **AUTHORITY TO DELEGATE.**—The President may
9 delegate authority to a critical infrastructure protection
10 program, designated under subsection (e), to enter into
11 a voluntary agreement to promote critical infrastructure
12 security, including with any Information Sharing and
13 Analysis Organization, or a plan of action as otherwise
14 defined in section 708 of the Defense Production Act of
15 1950 (50 U.S.C. App. 2158).

16 **SEC. 725. NO PRIVATE RIGHT OF ACTION.**

17 Nothing in this subtitle may be construed to create
18 a private right of action for enforcement of any provision
19 of this Act.

20 **Subtitle D—Acquisitions**

21 **SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.**

22 (a) **AUTHORITY.**—During the five-year period fol-
23 lowing the effective date of this Act, the Secretary may
24 carry out a pilot program under which the Secretary may
25 exercise the following authorities:



1 (1)(A) In carrying out basic, applied, and ad-
2 vanced research and development projects for re-
3 sponse to existing or emerging terrorist threats, the
4 Secretary may exercise the same authority (subject
5 to the same limitations and conditions) with respect
6 to such research and projects as the Secretary of
7 Defense may exercise under section 2371 of title 10,
8 United States Code (except for subsections (b) and
9 (f) of such section), after making a determination
10 that—

11 (i) the use of a contract, grant, or coopera-
12 tive agreement for such projects is not feasible
13 or appropriate; and

14 (ii) use of other authority to waive Federal
15 procurement laws or regulations would not be
16 feasible or appropriate to accomplish such
17 projects.

18 (B) The annual report required under sub-
19 section (h) of such section 2371, as applied to the
20 Secretary by this paragraph, shall be submitted to
21 the President of the Senate and the Speaker of the
22 House of Representatives.

23 (2)(A) Under the authority of paragraph (1)
24 and subject to the limitations of such paragraph, the
25 Secretary may carry out prototype projects, in ac-



1 cordance with the requirements and conditions pro-
2 vided for carrying out prototype projects under sec-
3 tion 845 of the National Defense Authorization Act
4 for Fiscal Year 1994 (Public Law 103–160; 10
5 U.S.C. 2371 note).

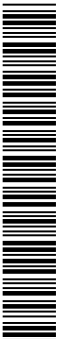
6 (B) In applying the authorities of such section
7 845—

8 (i) subsection (c) thereof shall apply with
9 respect to prototype projects under this para-
10 graph, except that in applying such subsection
11 any reference in such subsection to the Comp-
12 troller General shall be deemed to refer to the
13 Comptroller General and the Inspector General
14 of the Department; and

15 (ii) the Secretary shall perform the func-
16 tions of the Secretary of Defense under sub-
17 section (d) thereof.

18 (b) REPORT.—Not later than one year after the effec-
19 tive date of this Act, and annually thereafter, the Comp-
20 troller General shall report to the Committee on Govern-
21 ment Reform of the House of Representatives and the
22 Committee on Governmental Affairs of the Senate on—

23 (1) whether use of the authorities described in
24 subsection (a) attracts nontraditional Government



1 contractors and results in the acquisition of needed
2 technologies; and

3 (2) if such authorities were to be made perma-
4 nent, whether additional safeguards are needed with
5 respect to the use of such authorities.

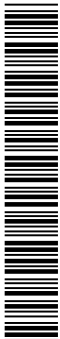
6 (c) DEFINITION OF NONTRADITIONAL GOVERNMENT
7 CONTRACTOR.—In this section, the term “nontraditional
8 Government contractor” has the same meaning as the
9 term “nontraditional defense contractor” as defined in
10 section 845(e) of the National Defense Authorization Act
11 for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C.
12 2371 note).

13 **SEC. 732. PERSONAL SERVICES.**

14 The Secretary—

15 (1) may procure the temporary or intermittent
16 services of experts or consultants (or organizations
17 thereof) in accordance with section 3109 of title 5,
18 United States Code; and

19 (2) may, whenever necessary due to an urgent
20 homeland security need, procure temporary (not to
21 exceed 1 year) or intermittent personal services, in-
22 cluding the services of experts or consultants (or or-
23 ganizations thereof), without regard to the pay limi-
24 tations of such section 3109.



1 **SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHOR-**
2 **ITY.**

3 (a) **AUTHORITY.**—(1) The Secretary may use the au-
4 thorities set forth in this section with respect to any pro-
5 curement made during the period beginning on the effec-
6 tive date of this Act and ending September 30, 2007, if
7 the Secretary determines in writing that the mission of
8 the Department (as described in section 101) would be
9 seriously impaired without the use of such authorities.

10 (2) The authority to make the determination de-
11 scribed in paragraph (1) may not be delegated by the Sec-
12 retary to an officer of the Department who is not ap-
13 pointed by the President with the advice and consent of
14 the Senate.

15 (3) Not later than the date that is seven days after
16 the date of any determination under paragraph (1), the
17 Secretary shall submit to the Committee on Government
18 Reform of the House of Representatives and the Com-
19 mittee on Governmental Affairs of the Senate—

20 (A) notification of such determination; and

21 (B) the justification for such determination.

22 (b) **INCREASED MICRO-PURCHASE THRESHOLD FOR**
23 **CERTAIN PROCUREMENTS.**—(1) The Secretary may des-
24 ignate certain employees of the Department to make pro-
25 curements described in subsection (a) for which in the ad-
26 ministration of section 32 of the Office of Federal Pro-



1 curement Policy Act (41 U.S.C. 428) the amount specified
2 in subsections (c), (d), and (f) of such section 32 shall
3 be deemed to be \$5,000.

4 (2) The number of employees designated under para-
5 graph (1) shall be—

6 (A) fewer than the number of employees of the
7 Department who are authorized to make purchases
8 without obtaining competitive quotations, pursuant
9 to section 32(c) of the Office of Federal Procure-
10 ment Policy Act (41 U.S.C. 428(c));

11 (B) sufficient to ensure the geographic dispersal
12 of the availability of the use of the procurement au-
13 thority under such paragraph at locations reasonably
14 considered to be potential terrorist targets; and

15 (C) sufficiently limited to allow for the careful
16 monitoring of employees designated under such
17 paragraph.

18 (3) Procurements made under the authority of this
19 subsection shall be subject to review by a designated su-
20 pervisor on not less than a monthly basis. The supervisor
21 responsible for the review shall be responsible for no more
22 than 7 employees making procurements under this sub-
23 section.

24 (c) SIMPLIFIED ACQUISITION PROCEDURES.—(1)
25 With respect to a procurement described in subsection (a),



1 the Secretary may deem the simplified acquisition thresh-
2 old referred to in section 4(11) of the Office of Federal
3 Procurement Policy Act (41 U.S.C. 403(11)) to be
4 \$175,000.

5 (2) Section 18(c)(1) of the Office of Federal Procure-
6 ment Policy Act is amended by adding at the end the fol-
7 lowing new subparagraph:

8 “(H) the procurement is by the Secretary
9 of Homeland Security pursuant to the special
10 procedures provided in section 733(c) of the
11 Homeland Security Act of 2002.”.

12 (d) APPLICATION OF CERTAIN COMMERCIAL ITEMS
13 AUTHORITIES.—(1) With respect to a procurement de-
14 scribed in subsection (a), the Secretary may deem any
15 item or service to be a commercial item for the purpose
16 of Federal procurement laws.

17 (2) The \$5,000,000 limitation provided in section
18 31(a)(2) of the Office of Federal Procurement Policy Act
19 (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the
20 Federal Property and Administrative Services Act of 1949
21 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be
22 \$7,500,000 for purposes of property or services under the
23 authority of this subsection.

24 (3) Authority under a provision of law referred to in
25 paragraph (2) that expires under section 4202(e) of the



1 Clinger-Cohen Act of 1996 (divisions D and E of Public
2 Law 104–106; 10 U.S.C. 2304 note) shall, notwith-
3 standing such section, continue to apply for a procurement
4 described in subsection (a).

5 (e) REPORT.—Not later than 180 days after the end
6 of fiscal year 2005, the Comptroller General shall submit
7 to the Committee on Governmental Affairs of the Senate
8 and the Committee on Government Reform of the House
9 of Representatives a report on the use of the authorities
10 provided in this section. The report shall contain the fol-
11 lowing:

12 (1) An assessment of the extent to which prop-
13 erty and services acquired using authorities provided
14 under this section contributed to the capacity of the
15 Federal workforce to facilitate the mission of the
16 Department as described in section 101.

17 (2) An assessment of the extent to which prices
18 for property and services acquired using authorities
19 provided under this section reflected the best value.

20 (3) The number of employees designated by
21 each executive agency under subsection (b)(1).

22 (4) An assessment of the extent to which the
23 Department has implemented subsections (b)(2) and
24 (b)(3) to monitor the use of procurement authority
25 by employees designated under subsection (b)(1).



1 (5) Any recommendations of the Comptroller
2 General for improving the effectiveness of the imple-
3 mentation of the provisions of this section.

4 **SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.**

5 There is established in the Department an office to
6 be known as the “Office of Small and Disadvantaged
7 Business Utilization”. The management of such office
8 shall be vested in the manner described in section 15(k)
9 of the Small Business Act (15 U.S.C. 644(k)) and shall
10 carry out the functions described in such section.

11 **Subtitle E—Property**

12 **SEC. 741. DEPARTMENT HEADQUARTERS.**

13 (a) IN GENERAL.—Subject to the requirements of the
14 Public Buildings Act of 1959 (40 U.S.C. 601 et seq.), the
15 Administrator of General Services shall construct a public
16 building to serve as the headquarters for the Department.

17 (b) LOCATION AND CONSTRUCTION STANDARDS.—
18 The headquarters facility shall be constructed to such
19 standards and specifications and at such a location as the
20 Administrator of General Services decides. In selecting a
21 site for the headquarters facility, the Administrator shall
22 give preference to parcels of land that are federally owned.

23 (c) USE OF HEADQUARTERS FACILITY.—The Admin-
24 istrator of General Services shall make the headquarter
25 facility, as well as other Government-owned or leased fa-



1 cilities, available to the Secretary pursuant to the Admin-
2 istrator's authorities under section 210 of the Federal
3 Property and Administrative Services Act of 1949 (40
4 U.S.C. 490 et seq.) and there is authorized to be appro-
5 priated to the Secretary such amounts as may be nec-
6 essary to pay the annual charges for General Services Ad-
7 ministration furnished space and services.

8 **Subtitle F—Support Anti-terrorism**
9 **by Fostering Effective Tech-**
10 **nologies Act of 2002 (the SAFE-**
11 **TY Act)**

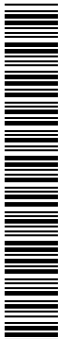
12 **SEC. 751. SHORT TITLE.**

13 This subtitle may be cited as the “Support Anti-ter-
14 rorism by Fostering Effective Technologies Act of 2002”
15 or the “SAFETY Act”.

16 **SEC. 752. ADMINISTRATION.**

17 (a) IN GENERAL.—The Secretary shall be responsible
18 for the administration of this subtitle.

19 (b) DESIGNATION OF QUALIFIED ANTI-TERRORISM
20 TECHNOLOGIES.—The Secretary may designate anti-ter-
21 rorism technologies that qualify for protection under the
22 system of risk management set forth in this subtitle in
23 accordance with criteria that shall include, but not be lim-
24 ited to, the following:



1 (1) Prior and extensive United States govern-
2 ment use and demonstrated substantial utility and
3 effectiveness.

4 (2) Availability of the technology for immediate
5 deployment in public and private settings.

6 (3) Existence of extraordinarily large or ex-
7 traordinarily unquantifiable potential third party li-
8 ability risk exposure to the Seller or other provider
9 of such anti-terrorism technology.

10 (4) Substantial likelihood that such anti-ter-
11 rorism technology will not be deployed unless protec-
12 tions under the system of risk management provided
13 under this subtitle are extended.

14 (5) Magnitude of risk exposure to the public if
15 such anti-terrorism technology is not deployed.

16 (6) evaluation of all scientific studies that can
17 be feasibly conducted in order to assess the capa-
18 bility of the technology to substantially reduce risks
19 of harm.

20 (c) REGULATIONS.—The Secretary may issue such
21 regulations, after notice and comment in accordance with
22 section 553 of title 5, United States, Code, as may be nec-
23 essary to carry out this subtitle.



1 **SEC. 753. LITIGATION MANAGEMENT.**

2 (a) FEDERAL CAUSE OF ACTION.—(1) There shall
3 exist a Federal cause of action for claims arising out of,
4 relating to, or resulting from an act of terrorism when
5 qualified anti-terrorism technologies have been deployed in
6 defense against such act and such claims result or may
7 result in loss to the Seller. The substantive law for deci-
8 sion in any such action shall be derived from the law, in-
9 cluding choice of law principles, of the State in which such
10 acts of terrorism occurred, unless such law is inconsistent
11 with or preempted by Federal law.

12 (2) Such appropriate district court of the United
13 States shall have original and exclusive jurisdiction over
14 all actions for any claim for loss of property, personal in-
15 jury, or death arising out of, relating to, or resulting from
16 an act of terrorism when qualified anti-terrorism tech-
17 nologies have been deployed in defense against such act
18 and such claims result or may result in loss to the Seller.

19 (b) SPECIAL RULES.—In an action brought under
20 this section for damages the following provisions apply:

21 (1) No punitive damages intended to punish or
22 deter, exemplary damages, or other damages not in-
23 tended to compensate a plaintiff for actual losses
24 may be awarded, nor shall any party be liable for in-
25 terest prior to the judgment.

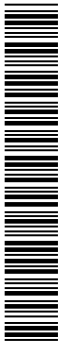


1 (2)(A) Noneconomic damages may be awarded
2 against a defendant only in an amount directly pro-
3 portional to the percentage of responsibility of such
4 defendant for the harm to the plaintiff, and no
5 plaintiff may recover noneconomic damages unless
6 the plaintiff suffered physical harm.

7 (B) For purposes of subparagraph (A), the
8 term “noneconomic damages” means damages for
9 losses for physical and emotional pain, suffering, in-
10 convenience, physical impairment, mental anguish,
11 disfigurement, loss of enjoyment of life, loss of soci-
12 ety and companionship, loss of consortium, hedonic
13 damages, injury to reputation, and any other non-
14 pecuniary losses.

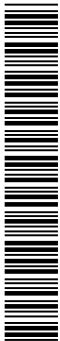
15 (c) COLLATERAL SOURCES.—Any recovery by a
16 plaintiff in an action under this section shall be reduced
17 by the amount of collateral source compensation, if any,
18 that the plaintiff has received or is entitled to receive as
19 a result of such acts of terrorism that result or may result
20 in loss to the Seller.

21 (d) GOVERNMENT CONTRACTOR DEFENSE.—(1)
22 Should a product liability lawsuit be filed for claims aris-
23 ing out of, relating to, or resulting from an act of ter-
24 rorism when qualified anti-terrorism technologies ap-
25 proved by the Secretary, as provided in paragraphs (2)



1 and (3) of this subsection, have been deployed in defense
2 against such act and such claims result or may result in
3 loss to the Seller, there shall be a rebuttable presumption
4 that the government contractor defense applies in such
5 lawsuit. This presumption shall only be overcome by evi-
6 dence showing that the Seller acted fraudulently or with
7 willful misconduct in submitting information to the Sec-
8 retary during the course of the Secretary's consideration
9 of such technology under this subsection. This presump-
10 tion of the government contractor defense shall apply re-
11 gardless of whether the claim against the Seller arises
12 from a sale of the product to Federal Government or non-
13 Federal Government customers.

14 (2) The Secretary will be exclusively responsible for
15 the review and approval of anti-terrorism technology for
16 purposes of establishing a government contractor defense
17 in any product liability lawsuit for claims arising out of,
18 relating to, or resulting from an act of terrorism when
19 qualified anti-terrorism technologies approved by the Sec-
20 retary, as provided in this paragraph and paragraph (3),
21 have been deployed in defense against such act and such
22 claims result or may result in loss to the Seller. Upon the
23 Seller's submission to the Secretary for approval of anti-
24 terrorism technology, the Secretary will conduct a com-
25 prehensive review of the design of such technology and de-



1 termine whether it will perform as intended, conforms to
2 the Seller's specifications, and is safe for use as intended.
3 The Seller will conduct safety and hazard analyses on such
4 technology and will supply the Secretary with all such in-
5 formation.

6 (3) For those products reviewed and approved by the
7 Secretary, the Secretary will issue a certificate of conform-
8 ance to the Seller and place the product on an Approved
9 Product List for Homeland Security.

10 (d) EXCLUSION.—Nothing in this section shall in any
11 way limit the ability of any person to seek any form of
12 recovery from any person, government, or other entity
13 that—

14 (1) attempts to commit, knowingly participates
15 in, aids and abets, or commits any act of terrorism,
16 or any criminal act related to or resulting from such
17 act of terrorism; or

18 (2) participates in a conspiracy to commit any
19 such act of terrorism or any such criminal act.

20 **SEC. 754. RISK MANAGEMENT.**

21 (a) IN GENERAL.—(1) Any person or entity that sells
22 or otherwise provides a qualified anti-terrorism technology
23 to non-federal government customers ("Seller") shall ob-
24 tain liability insurance of such types and in such amounts
25 as shall be required in accordance with this section to sat-



1 isfy otherwise compensable third-party claims arising out
2 of, relating to, or resulting from an act of terrorism when
3 qualified anti-terrorism technologies have been deployed in
4 defense against such act.

5 (2) For the total claims related to one such act of
6 terrorism, the Seller is not required to obtain liability in-
7 surance of more than the maximum amount of liability
8 insurance reasonably available from private sources on the
9 world market at prices and terms that will not unreason-
10 ably distort the sales price of Seller's anti-terrorism tech-
11 nologies.

12 (3) Liability insurance obtained pursuant to this sub-
13 section shall, in addition to the Seller, protect the fol-
14 lowing, to the extent of their potential liability for involve-
15 ment in the manufacture, qualification, sale, use, or oper-
16 ation of qualified anti-terrorism technologies deployed in
17 defense against an act of terrorism:

18 (A) contractors, subcontractors, suppliers, ven-
19 dors and customers of the Seller.

20 (B) contractors, subcontractors, suppliers, and
21 vendors of the customer.

22 (4) Such liability insurance under this section shall
23 provide coverage against third party claims arising out of,
24 relating to, or resulting from the sale or use of anti-ter-
25 rorism technologies.



1 (b) RECIPROCAL WAIVER OF CLAIMS.—The Seller
2 shall enter into a reciprocal waiver of claims with its con-
3 tractors, subcontractors, suppliers, vendors and cus-
4 tomers, and contractors and subcontractors of the cus-
5 tomers, involved in the manufacture, sale, use or operation
6 of qualified anti-terrorism technologies, under which each
7 party to the waiver agrees to be responsible for losses, in-
8 cluding business interruption losses, that it sustains, or
9 for losses sustained by its own employees resulting from
10 an activity resulting from an act of terrorism when quali-
11 fied anti-terrorism technologies have been deployed in de-
12 fense against such act.

13 (c) EXTENT OF LIABILITY.—Notwithstanding any
14 other provision of law, liability for all claims against a
15 Seller arising out of, relating to, or resulting from an act
16 of terrorism when qualified anti-terrorism technologies
17 have been deployed in defense against such act and such
18 claims result or may result in loss to the Seller, whether
19 for compensatory or punitive damages or for contribution
20 or indemnity, shall not be in an amount greater than the
21 limits of liability insurance coverage required to be main-
22 tained by the Seller under this section.

23 **SEC. 755. DEFINITIONS.**

24 For purposes of this subtitle, the following definitions
25 apply:



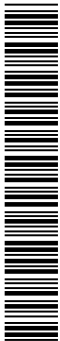
1 (1) QUALIFIED ANTI-TERRORISM TECH-
2 NOLOGY.—For purposes of this subtitle, the term
3 “qualified anti-terrorism technology” means any
4 product, device, or technology designed, developed,
5 or modified for the specific purpose of preventing,
6 detecting, identifying, or deterring acts of terrorism
7 and limiting the harm such acts might otherwise
8 cause, that is designated as such by the Secretary.

9 (2) ACT OF TERRORISM.—(A) The term “act of
10 terrorism” means any act that the Secretary deter-
11 mines meets the requirements under subparagraph
12 (B), as such requirements are further defined and
13 specified by the Secretary.

14 (B) REQUIREMENTS.—An act meets the re-
15 quirements of this subparagraph if the act—

16 (i) is unlawful;

17 (ii) causes harm to a person, property, or
18 entity, in the United States, or in the case of
19 a domestic United States air carrier or a
20 United States-flag vessel (or a vessel based
21 principally in the United States on which
22 United States income tax is paid and whose in-
23 surance coverage is subject to regulation in the
24 United States), in or outside the United States;
25 and



1 (iii) uses or attempts to use instrumental-
2 ities, weapons or other methods designed or in-
3 tended to cause mass destruction, injury or
4 other loss to citizens or institutions of the
5 United States.

6 (3) INSURANCE CARRIER.—The term “insur-
7 ance carrier” means any corporation, association, so-
8 ciety, order, firm, company, mutual, partnership, in-
9 dividual aggregation of individuals, or any other
10 legal entity that provides commercial property and
11 casualty insurance. Such term includes any affiliates
12 of a commercial insurance carrier.

13 (4) LIABILITY INSURANCE.—

14 (A) IN GENERAL.—The term “liability in-
15 surance” means insurance for legal liabilities
16 incurred by the insured resulting from—

17 (i) loss of or damage to property of
18 others;

19 (ii) ensuing loss of income or extra ex-
20 pense incurred because of loss of or dam-
21 age to property of others;

22 (iii) bodily injury (including) to per-
23 sons other than the insured or its employ-
24 ees; or



1 (iv) loss resulting from debt or default
2 of another.

3 (5) LOSS.—The term “loss” means death, bod-
4 ily injury, or loss of or damage to property, includ-
5 ing business interruption loss.

6 (6) NON-FEDERAL GOVERNMENT CUS-
7 TOMERS.—The term “non-Federal Government cus-
8 tomers” means any customer of a Seller that is not
9 an agency or instrumentality of the United States
10 Government with authority under Public Law 85-
11 804 to provide for indemnification under certain cir-
12 cumstances for third-party claims against its con-
13 tractors, including but not limited to State and local
14 authorities and commercial entities.

15 **Subtitle G—Other Provisions**

16 **SEC. 761. ESTABLISHMENT OF HUMAN RESOURCES MAN- 17 AGEMENT SYSTEM.**

18 (a) AUTHORITY.—

19 (1) IN GENERAL.—Subpart I of part III of title
20 5, United States Code, is amended by adding at the
21 end the following:

22 **“CHAPTER 97—DEPARTMENT OF HOMELAND 23 SECURITY**

“Sec.

“9701. Establishment of human resources management system.



1 **“§ 9701. Establishment of human resources manage-**
2 **ment system**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of this title, the Secretary of Homeland Security
5 may, in regulations prescribed jointly with the Director
6 of the Office of Personnel Management, establish, and
7 from time to time adjust, a human resources management
8 system for some or all of the organizational units of the
9 Department of Homeland Security.

10 “(b) SYSTEM REQUIREMENTS.—Any system estab-
11 lished under subsection (a) shall—

12 “(1) be flexible;

13 “(2) be contemporary;

14 “(3) not waive, modify, or otherwise affect—

15 “(A) the public employment principles of
16 merit and fitness set forth in section 2301, in-
17 cluding the principles of hiring based on merit,
18 fair treatment without regard to political affili-
19 ation or other non-merit considerations, equal
20 pay for equal work, and protection of employees
21 against reprisal for whistleblowing;

22 “(B) any provision of section 2302, relat-
23 ing to prohibited personnel practices;

24 “(C)(i) any provision of law referred to in
25 section 2302(b)(1); or



1 “(ii) any provision of law implementing
2 any provision of law referred to in section
3 2302(b)(1) by—

4 “(I) providing for equal employment
5 opportunity through affirmative action; or

6 “(II) providing any right or remedy
7 available to any employee or applicant for
8 employment in the civil service;

9 “(D) any other provision of this title (as
10 described in subsection (c)); or

11 “(E) any rule or regulation prescribed
12 under any provision of law referred to in any of
13 the preceding subparagraphs of this paragraph;

14 “(4) ensure that employees may organize, bar-
15 gain collectively, and participate through labor orga-
16 nizations of their own choosing in decisions which
17 affect them, subject to any exclusion from coverage
18 or limitation on negotiability established by law or
19 under subsection (a) for employees engaged in intel-
20 ligence, counterintelligence, investigative, or security
21 work which directly affects national security; and

22 “(5) permit the use of a category rating system
23 for evaluating applicants for positions in the com-
24 petitive service.



1 “(c) OTHER NONWAIVABLE PROVISIONS.—The other
2 provisions of this title, as referred to in subsection
3 (b)(3)(D), are (to the extent not otherwise specified in
4 subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

5 “(1) subparts A, B, E, G, and H of this part;
6 and

7 “(2) chapters 41, 45, 47, 55, 57, 59, 72, 73,
8 and 79, and this chapter.

9 “(d) LIMITATIONS RELATING TO PAY.—Nothing in
10 this section shall constitute authority—

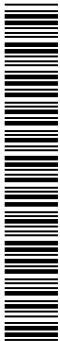
11 “(1) to modify the pay of any employee who
12 serves in—

13 “(A) an Executive Schedule position under
14 subchapter II of chapter 53 of title 5, United
15 States Code; or

16 “(B) a position for which the rate of basic
17 pay is fixed in statute by reference to a section
18 or level under subchapter II of chapter 53 of
19 such title 5;

20 “(2) to fix pay for any employee or position at
21 an annual rate greater than the maximum amount
22 of cash compensation allowable under section 5307
23 of such title 5 in a year; or

24 “(3) to exempt any employee from the applica-
25 tion of such section 5307.



1 “(e) SUNSET PROVISION.—Effective 5 years after the
2 date of the enactment of this section, all authority to issue
3 regulations under this section (including regulations which
4 would modify, supersede, or terminate any regulations
5 previously issued under this section) shall cease to be
6 available.”.

7 (2) CLERICAL AMENDMENT.—The table of
8 chapters for part III of title 5, United States Code,
9 is amended by adding at the end the following:

“97. Department of Homeland Security 9701”.

10 (b) EFFECT ON PERSONNEL.—

11 (1) NON-SEPARATION OR NON-REDUCTION IN
12 GRADE OR COMPENSATION OF FULL-TIME PER-
13 SONNEL AND PART-TIME PERSONNEL HOLDING PER-
14 MANENT POSITIONS.—Except as otherwise provided
15 in this Act, the transfer pursuant to this Act of full-
16 time personnel (except special Government employ-
17 ees) and part-time personnel holding permanent po-
18 sitions shall not cause any such employee to be sepa-
19 rated or reduced in grade or compensation for one
20 year after the date of transfer to the Department.

21 (2) POSITIONS COMPENSATED IN ACCORDANCE
22 WITH EXECUTIVE SCHEDULE.—Any person who, on
23 the day preceding such person’s date of transfer
24 pursuant to this Act, held a position compensated in
25 accordance with the Executive Schedule prescribed

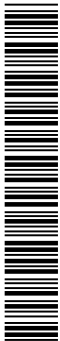


1 in chapter 53 of title 5, United States Code, and
2 who, without a break in service, is appointed in the
3 Department to a position having duties comparable
4 to the duties performed immediately preceding such
5 appointment shall continue to be compensated in
6 such new position at not less than the rate provided
7 for such previous position, for the duration of the
8 service of such person in such new position.

9 (3) COORDINATION RULE.—Any exercise of au-
10 thority under chapter 97 of title 5, United States
11 Code (as amended by subsection (a)), including
12 under any system established under such chapter,
13 shall be in conformance with the requirements of
14 this subsection.

15 **SEC. 762. ADVISORY COMMITTEES.**

16 The Secretary may establish, appoint members of,
17 and use the services of, advisory committees, as the Sec-
18 retary may deem necessary. An advisory committee estab-
19 lished under this section may be exempted by the Sec-
20 retary from Public Law 92–463, but the Secretary shall
21 publish notice in the Federal Register announcing the es-
22 tablishment of such a committee and identifying its pur-
23 pose and membership. Notwithstanding the preceding sen-
24 tence, members of an advisory committee that is exempted
25 by the Secretary under the preceding sentence who are



1 special Government employees (as that term is defined in
2 section 202 of title 18, United States Code) shall be eligi-
3 ble for certifications under subsection (b)(3) of section
4 208 of title 18, United States Code, for official actions
5 taken as a member of such advisory committee.

6 **SEC. 763. REORGANIZATION; TRANSFER OF APPROPRIA-**
7 **TIONS.**

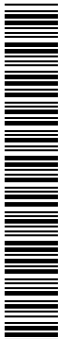
8 (a) REORGANIZATION.—

9 (1) IN GENERAL.—The Secretary may allocate
10 or reallocate functions among the officers of the De-
11 partment, and may establish, consolidate, alter, or
12 discontinue organizational units within the Depart-
13 ment, but only—

14 (A) pursuant to section 802; or

15 (B) after the expiration of 60 days after
16 providing notice of such action to the appro-
17 priate congressional committees, which shall in-
18 clude an explanation of the rationale for the ac-
19 tion.

20 (2) LIMITATIONS.—(A) Authority under para-
21 graph (1)(A) does not extend to the abolition of any
22 agency, entity, organizational unit, program, or
23 function established or required to be maintained by
24 this Act.



1 (B) Authority under paragraph (1)(B) does not
2 extend to the abolition of any agency, entity, organi-
3 zational unit, program, or function established or re-
4 quired to be maintained by statute.

5 (b) TRANSFER OF APPROPRIATIONS.—

6 (1) IN GENERAL.—Except as otherwise specifi-
7 cally provided by law, not to exceed two percent of
8 any appropriation available to the Secretary in any
9 fiscal year may be transferred between such appro-
10 priations, except that not less than 15 days' notice
11 shall be given to the Committees on Appropriations
12 of the Senate and House of Representatives before
13 any such transfer is made.

14 (2) EXPIRATION OF AUTHORITY.—The author-
15 ity under paragraph (1) shall expire two years after
16 the date of enactment of this Act.

17 **SEC. 764. MISCELLANEOUS AUTHORITIES.**

18 (a) SEAL.—The Department shall have a seal, whose
19 design is subject to the approval of the President.

20 (b) GIFTS, DEVISES, AND BEQUESTS.—With respect
21 to the Department, the Secretary shall have the same au-
22 thorities that the Attorney General has with respect to the
23 Department of Justice under section 524(d) of title 28,
24 United States Code.



1 (c) PARTICIPATION OF MEMBERS OF THE ARMED
2 FORCES.—With respect to the Department, the Secretary
3 shall have the same authorities that the Secretary of
4 Transportation has with respect to the Department of
5 Transportation under section 324 of title 49, United
6 States Code.

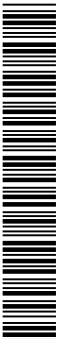
7 (d) REDELEGATION OF FUNCTIONS.—Unless other-
8 wise provided in the delegation or by law, any function
9 delegated under this Act may be redelegated to any subor-
10 dinate.

11 **SEC. 765. MILITARY ACTIVITIES.**

12 Nothing in this Act shall confer upon the Secretary
13 any authority to engage in warfighting, the military de-
14 fense of the United States, or other military activities, nor
15 shall anything in this Act limit the existing authority of
16 the Department of Defense or the Armed Forces to engage
17 in warfighting, the military defense of the United States,
18 or other military activities.

19 **SEC. 766. REGULATORY AUTHORITY.**

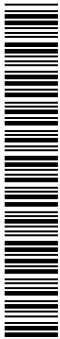
20 Except as otherwise provided in this Act, this Act
21 vests no new regulatory authority in the Secretary or any
22 other Federal official, and transfers to the Secretary or
23 another Federal official only such regulatory authority as
24 exists on the date of enactment of this Act within any
25 agency, program, or function transferred to the Depart-



1 ment pursuant to this Act, or that on such date of enact-
2 ment is exercised by another official of the executive
3 branch with respect to such agency, program, or function.
4 Any such transferred authority may not be exercised by
5 an official from whom it is transferred upon transfer of
6 such agency, program, or function to the Secretary or an-
7 other Federal official pursuant to this Act. This Act may
8 not be construed as altering or diminishing the regulatory
9 authority of any other executive agency, except to the ex-
10 tent that this Act transfers such authority from the agen-
11 cy.

12 **SEC. 767. PROVISIONS REGARDING TRANSFERS FROM DE-**
13 **PARTMENT OF ENERGY.**

14 (a) SEPARATE CONTRACTING.—To the extent that
15 programs or activities transferred by this Act from the De-
16 partment of Energy to the Department of Homeland Se-
17 curity are being carried out through contracts with the
18 operator of a national laboratory of the Department of
19 Energy, the Secretary of Homeland Security and the Sec-
20 retary of Energy shall ensure that contracts for such pro-
21 grams and activities between the Department of Home-
22 land Security and such operator are separate from the
23 contracts of the Department of Energy with such oper-
24 ator.



1 (b) HOMELAND SECURITY CENTER.—(1) Notwith-
2 standing section 307, the Secretary, acting through the
3 Under Secretary for Science and Technology, shall estab-
4 lish at a national security laboratory of the National Nu-
5 clear Security Administration, a center to serve as the pri-
6 mary location for carrying out research, development, test,
7 and evaluation activities of the Department related to the
8 goals described in section 301(6)(A) and (B). The Sec-
9 retary shall establish, in concurrence with the Secretary
10 of Energy, such additional centers at one or more national
11 laboratories of the Department of Energy as the Secretary
12 considers appropriate to serve as secondary locations for
13 carrying out such activities.

14 (2) Each center established under paragraph (1) shall
15 be composed of such facilities and assets as are required
16 for the performance of such activities. The particular fa-
17 cilities and assets shall be designated and transferred by
18 the Secretary of Energy with the concurrence of the Sec-
19 retary.

20 (c) REIMBURSEMENT OF COSTS.—In the case of an
21 activity carried out by the operator of a national labora-
22 tory of the Department of Energy but under contract with
23 the Department of Homeland Security, the Department
24 of Homeland Security shall reimburse the Department of
25 Energy for costs of such activity through a method under



1 which the Secretary of Energy waives any requirement for
2 the Department of Homeland Security to pay administra-
3 tive charges or personnel costs of the Department of En-
4 ergy or its contractors in excess of the amount that the
5 Secretary of Energy pays for an activity carried out by
6 such contractor and paid for by the Department of En-
7 ergy.

8 (d) LABORATORY DIRECTED RESEARCH AND DEVEL-
9 OPMENT BY THE DEPARTMENT OF ENERGY.—No funds
10 authorized to be appropriated or otherwise made available
11 to the Department in any fiscal year may be obligated or
12 expended for laboratory directed research and develop-
13 ment activities carried out by the Department of Energy
14 unless such activities support the mission of the Depart-
15 ment described in section 101.

16 (e) DEPARTMENT OF ENERGY COORDINATION ON
17 HOMELAND SECURITY RELATED RESEARCH.—The Sec-
18 retary of Energy shall ensure that any research, develop-
19 ment, test, and evaluation activities conducted within the
20 Department of Energy that are directly or indirectly re-
21 lated to homeland security are fully coordinated with the
22 Secretary to minimize duplication of effort and maximize
23 the effective application of Federal budget resources.



1 **SEC. 768. COUNTERNARCOTICS OFFICER.**

2 The Secretary shall appoint a senior official in the
3 Department to assume primary responsibility for coordi-
4 nating policy and operations within the Department and
5 between the Department and other Federal departments
6 and agencies with respect to interdicting the entry of ille-
7 gal drugs into the United States, and tracking and sev-
8 ering connections between illegal drug trafficking and ter-
9 rorism.

10 **SEC. 769. OFFICE OF INTERNATIONAL AFFAIRS.**

11 (a) ESTABLISHMENT.—There is established within
12 the Office of the Secretary an Office of International Af-
13 fairs. The Office shall be headed by a Director, who shall
14 be a senior official appointed by the Secretary.

15 (b) DUTIES OF THE DIRECTOR.—The Director shall
16 have the following duties:

17 (1) To promote information and education ex-
18 change with nations friendly to the United States in
19 order to promote sharing of best practices and tech-
20 nologies relating to homeland security. Such infor-
21 mation exchange shall include the following:

22 (A) Joint research and development on
23 countermeasures.

24 (B) Joint training exercises of first re-
25 sponders.



1 (C) Exchange of expertise on terrorism
2 prevention, response, and crisis management.

3 (2) To identify areas for homeland security in-
4 formation and training exchange where the United
5 States has a demonstrated weakness and another
6 friendly nation or nations have a demonstrated ex-
7 pertise.

8 (3) To plan and undertake international con-
9 ferences, exchange programs, and training activities.

10 (4) To manage international activities within
11 the Department in coordination with other Federal
12 officials with responsibility for counter-terrorism
13 matters.

14 **SEC. 770. PROHIBITION OF THE TERRORISM INFORMATION**
15 **AND PREVENTION SYSTEM.**

16 Any and all activities of the Federal Government to
17 implement the proposed component program of the Citizen
18 Corps known as Operation TIPS (Terrorism Information
19 and Prevention System) are hereby prohibited.

20 **SEC. 771. REVIEW OF PAY AND BENEFIT PLANS.**

21 Notwithstanding any other provision of this Act, the
22 Secretary shall, in consultation with the Director of the
23 Office of Personnel Management, review the pay and ben-
24 efit plans of each agency whose functions are transferred
25 under this Act to the Department and, within 90 days



1 after the date of enactment, submit a plan to the Presi-
2 dent of the Senate and the Speaker of the House of Rep-
3 resentatives and the appropriate committees and sub-
4 committees of the Congress, for ensuring, to the maximum
5 extent practicable, the elimination of disparities in pay
6 and benefits throughout the Department, especially among
7 law enforcement personnel, that are inconsistent with
8 merit system principles set forth in section 2301 of title
9 5, United States Code.

10 **SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA.**

11 The Secretary (or the Secretary's designee) shall
12 work in cooperation with the Mayor of the District of Co-
13 lumbia (or the Mayor's designee) for the purpose of inte-
14 grating the District of Columbia into the planning, coordi-
15 nation, and execution of the activities of the Federal Gov-
16 ernment for the enhancement of domestic preparedness
17 against the consequences of terrorist attacks.

18 **SEC. 773. TRANSFER OF THE FEDERAL LAW ENFORCEMENT**
19 **TRAINING CENTER.**

20 There shall be transferred to the Attorney General
21 the functions, personnel, assets, and liabilities of the Fed-
22 eral Law Enforcement Training Center, including any
23 functions of the Secretary of the Treasury relating there-
24 to.



1 **TITLE VIII—TRANSITION**
2 **Subtitle A—Reorganization Plan**

3 **SEC. 801. DEFINITIONS.**

4 For purposes of this title:

5 (1) The term “agency” includes any entity, or-
6 ganizational unit, program, or function.

7 (2) The term “transition period” means the 12-
8 month period beginning on the effective date of this
9 Act.

10 **SEC. 802. REORGANIZATION PLAN.**

11 (a) SUBMISSION OF PLAN.—Not later than 60 days
12 after the date of the enactment of this Act, the President
13 shall transmit to the appropriate congressional committees
14 a reorganization plan regarding the following:

15 (1) The transfer of agencies, personnel, assets,
16 and obligations to the Department pursuant to this
17 Act.

18 (2) Any consolidation, reorganization, or
19 streamlining of agencies transferred to the Depart-
20 ment pursuant to this Act.

21 (b) PLAN ELEMENTS.—The plan transmitted under
22 subsection (a) shall contain, consistent with this Act, such
23 elements as the President deems appropriate, including
24 the following:



1 (1) Identification of any functions of agencies
2 transferred to the Department pursuant to this Act
3 that will not be transferred to the Department under
4 the plan.

5 (2) Specification of the steps to be taken by the
6 Secretary to organize the Department, including the
7 delegation or assignment of functions transferred to
8 the Department among officers of the Department
9 in order to permit the Department to carry out the
10 functions transferred under the plan.

11 (3) Specification of the funds available to each
12 agency that will be transferred to the Department as
13 a result of transfers under the plan.

14 (4) Specification of the proposed allocations
15 within the Department of unexpended funds trans-
16 ferred in connection with transfers under the plan.

17 (5) Specification of any proposed disposition of
18 property, facilities, contracts, records, and other as-
19 sets and obligations of agencies transferred under
20 the plan.

21 (6) Specification of the proposed allocations
22 within the Department of the functions of the agen-
23 cies and subdivisions that are not related directly to
24 securing the homeland.



1 (c) MODIFICATION OF PLAN.—The President may,
2 on the basis of consultations with the appropriate congres-
3 sional committees, modify or revise any part of the plan
4 until that part of the plan becomes effective in accordance
5 with subsection (d).

6 (d) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The reorganization plan de-
8 scribed in this section, including any modifications
9 or revisions of the plan under subsection (d), shall
10 become effective for an agency on the earlier of—

11 (A) the date specified in the plan (or the
12 plan as modified pursuant to subsection (d)),
13 except that such date may not be earlier than
14 90 days after the date the President has trans-
15 mitted the reorganization plan to the appro-
16 priate congressional committees pursuant to
17 subsection (a); or

18 (B) the end of the transition period.

19 (2) STATUTORY CONSTRUCTION.—Nothing in
20 this subsection may be construed to require the
21 transfer of functions, personnel, records, balances of
22 appropriations, or other assets of an agency on a
23 single date.



1 (3) SUPERSEDES EXISTING LAW.—Paragraph
2 (1) shall apply notwithstanding section 905(b) of
3 title 5, United States Code.

4 **Subtitle B—Transitional Provisions**

5 **SEC. 811. TRANSITIONAL AUTHORITIES.**

6 (a) PROVISION OF ASSISTANCE BY OFFICIALS.—
7 Until the transfer of an agency to the Department, any
8 official having authority over or functions relating to the
9 agency immediately before the effective date of this Act
10 shall provide to the Secretary such assistance, including
11 the use of personnel and assets, as the Secretary may re-
12 quest in preparing for the transfer and integration of the
13 agency into the Department.

14 (b) SERVICES AND PERSONNEL.—During the transi-
15 tion period, upon the request of the Secretary, the head
16 of any executive agency may, on a reimbursable basis, pro-
17 vide services or detail personnel to assist with the transi-
18 tion.

19 (c) TRANSFER OF FUNDS.—Until the transfer of an
20 agency to the Department, the President is authorized to
21 transfer to the Secretary to fund the purposes authorized
22 in this Act—

23 (1) for administrative expenses related to the
24 establishment of the Department of Homeland Secu-
25 rity, not to exceed two percent of the unobligated



1 balance of any appropriation enacted prior to Octo-
2 ber 1, 2002, available to such agency; and

3 (2) for purposes for which the funds were ap-
4 propriated, not to exceed three percent of the unobli-
5 gated balance of any appropriation available to such
6 agency;

7 except that not less than 15 days' notice shall be given
8 to the Committees on Appropriations of the House of Rep-
9 resentatives and the Senate before any such funds transfer
10 is made.

11 (d) ACTING OFFICIALS.—(1) During the transition
12 period, pending the advice and consent of the Senate to
13 the appointment of an officer required by this Act to be
14 appointed by and with such advice and consent, the Presi-
15 dent may designate any officer whose appointment was re-
16 quired to be made by and with such advice and consent
17 and who was such an officer immediately before the effec-
18 tive date of this Act (and who continues in office) or im-
19 mediately before such designation, to act in such office
20 until the same is filled as provided in this Act. While so
21 acting, such officers shall receive compensation at the
22 higher of—

23 (A) the rates provided by this Act for the re-
24 spective offices in which they act; or



1 (B) the rates provided for the offices held at
2 the time of designation.

3 (2) Nothing in this Act shall be understood to require
4 the advice and consent of the Senate to the appointment
5 by the President to a position in the Department of any
6 officer whose agency is transferred to the Department
7 pursuant to this Act and whose duties following such
8 transfer are germane to those performed before such
9 transfer.

10 (e) TRANSFER OF PERSONNEL, ASSETS, OBLIGA-
11 TIONS, AND FUNCTIONS.—Upon the transfer of an agency
12 to the Department—

13 (1) the personnel, assets, and obligations held
14 by or available in connection with the agency shall
15 be transferred to the Secretary for appropriate allo-
16 cation, subject to the approval of the Director of the
17 Office of Management and Budget and in accord-
18 ance with the provisions of section 1531(a)(2) of
19 title 31, United States Code; and

20 (2) the Secretary shall have all functions relat-
21 ing to the agency that any other official could by law
22 exercise in relation to the agency immediately before
23 such transfer, and shall have in addition all func-
24 tions vested in the Secretary by this Act or other
25 law.



1 Paragraph (1) shall not apply to appropriations trans-
2 ferred pursuant to section 763(b).

3 (f) PROHIBITION ON USE OF TRANSPORTATION
4 TRUST FUNDS.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of this Act, no funds derived from the
7 Highway Trust Fund, Airport and Airway Trust
8 Fund, Inland Waterway Trust Fund, Harbor Main-
9 tenance Trust Fund, or Oil Spill Liability Trust
10 Fund may be transferred to, made available to, or
11 obligated by the Secretary or any other official in
12 the Department.

13 (2) LIMITATION.—This subsection shall not
14 apply to security-related funds provided to the Fed-
15 eral Aviation Administration for fiscal years pre-
16 ceding fiscal year 2003 for (A) operations, (B) facili-
17 ties and equipment, or (C) research, engineering,
18 and development.

19 **SEC. 812. SAVINGS PROVISIONS.**

20 (a) COMPLETED ADMINISTRATIVE ACTIONS.—(1)
21 Completed administrative actions of an agency shall not
22 be affected by the enactment of this Act or the transfer
23 of such agency to the Department, but shall continue in
24 effect according to their terms until amended, modified,
25 superseded, terminated, set aside, or revoked in accord-



1 ance with law by an officer of the United States or a court
2 of competent jurisdiction, or by operation of law.

3 (2) For purposes of paragraph (1), the term “com-
4 pleted administrative action” includes orders, determina-
5 tions, rules, regulations, personnel actions, permits, agree-
6 ments, grants, contracts, certificates, licenses, registra-
7 tions, and privileges.

8 (b) PENDING PROCEEDINGS.—Subject to the author-
9 ity of the Secretary under this Act—

10 (1) pending proceedings in an agency, including
11 notices of proposed rulemaking, and applications for
12 licenses, permits, certificates, grants, and financial
13 assistance, shall continue notwithstanding the enact-
14 ment of this Act or the transfer of the agency to the
15 Department, unless discontinued or modified under
16 the same terms and conditions and to the same ex-
17 tent that such discontinuance could have occurred if
18 such enactment or transfer had not occurred; and

19 (2) orders issued in such proceedings, and ap-
20 peals therefrom, and payments made pursuant to
21 such orders, shall issue in the same manner and on
22 the same terms as if this Act had not been enacted
23 or the agency had not been transferred, and any
24 such orders shall continue in effect until amended,
25 modified, superseded, terminated, set aside, or re-



1 voked by an officer of the United States or a court
2 of competent jurisdiction, or by operation of law.

3 (c) PENDING CIVIL ACTIONS.—Subject to the author-
4 ity of the Secretary under this Act, pending civil actions
5 shall continue notwithstanding the enactment of this Act
6 or the transfer of an agency to the Department, and in
7 such civil actions, proceedings shall be had, appeals taken,
8 and judgments rendered and enforced in the same manner
9 and with the same effect as if such enactment or transfer
10 had not occurred.

11 (d) REFERENCES.—References relating to an agency
12 that is transferred to the Department in statutes, Execu-
13 tive orders, rules, regulations, directives, or delegations of
14 authority that precede such transfer or the effective date
15 of this Act shall be deemed to refer, as appropriate, to
16 the Department, to its officers, employees, or agents, or
17 to its corresponding organizational units or functions.
18 Statutory reporting requirements that applied in relation
19 to such an agency immediately before the effective date
20 of this Act shall continue to apply following such transfer
21 if they refer to the agency by name.

22 (e) EMPLOYMENT PROVISIONS.—(1) Notwith-
23 standing the generality of the foregoing (including sub-
24 sections (a) and (d)), in and for the Department the Sec-
25 retary may, in regulations prescribed jointly with the Di-



1 rector of the Office of Personnel Management, adopt the
2 rules, procedures, terms, and conditions, established by
3 statute, rule, or regulation before the effective date of this
4 Act, relating to employment in any agency transferred to
5 the Department pursuant to this Act; and

6 (2) except as otherwise provided in this Act, or under
7 authority granted by this Act, the transfer pursuant to
8 this Act of personnel shall not alter the terms and condi-
9 tions of employment, including compensation, of any em-
10 ployee so transferred.

11 **SEC. 813. TERMINATIONS.**

12 Except as otherwise provided in this Act, whenever
13 all the functions vested by law in any agency have been
14 transferred pursuant to this Act, each position and office
15 the incumbent of which was authorized to receive com-
16 pensation at the rates prescribed for an office or position
17 at level II, III, IV, or V, of the Executive Schedule, shall
18 terminate.

19 **SEC. 814. INCIDENTAL TRANSFERS.**

20 The Director of the Office of Management and Budg-
21 et, in consultation with the Secretary, is authorized and
22 directed to make such additional incidental dispositions of
23 personnel, assets, and obligations held, used, arising from,
24 available, or to be made available, in connection with the



1 functions transferred by this Act, as the Director may
2 deem necessary to accomplish the purposes of this Act.

3 **SEC. 815. NATIONAL IDENTIFICATION SYSTEM NOT AU-**
4 **THORIZED.**

5 Nothing in this Act shall be construed to authorize
6 the development of a national identification system or
7 card.

8 **SEC. 816. CONTINUITY OF INSPECTOR GENERAL OVER-**
9 **SIGHT.**

10 Notwithstanding the transfer of an agency to the De-
11 partment pursuant to this Act, the Inspector General that
12 exercised oversight of such agency prior to such transfer
13 shall continue to exercise oversight of such agency during
14 the period of time, if any, between the transfer of such
15 agency to the Department pursuant to this Act and the
16 appointment of the Inspector General of the Department
17 of Homeland Security in accordance with section 103(b)
18 of this Act.

19 **SEC. 817. REFERENCE.**

20 With respect to any function transferred by or under
21 this Act (including under a reorganization plan that be-
22 comes effective under section 802) and exercised on or
23 after the effective date of this Act, reference in any other
24 Federal law to any department, commission, or agency or
25 any officer or office the functions of which are so trans-



1 ferred shall be deemed to refer to the Secretary, other offi-
2 cial, or component of the Department to which such func-
3 tion is so transferred.

4 **TITLE IX—CONFORMING AND** 5 **TECHNICAL AMENDMENTS**

6 **SEC. 901. INSPECTOR GENERAL ACT OF 1978.**

7 Section 11 of the Inspector General Act of 1978
8 (Public Law 95–452) is amended—

9 (1) by inserting “Homeland Security,” after
10 “Transportation,” each place it appears;

11 (2) by striking “; and” each place it appears
12 and inserting “;”;

13 (3) by striking “,” and inserting “,”; and

14 (4) by striking “;” and inserting “;”.

15 **SEC. 902. EXECUTIVE SCHEDULE.**

16 (a) IN GENERAL.—Title 5, United States Code, is
17 amended—

18 (1) in section 5312, by inserting “Secretary of
19 Homeland Security.” as a new item after “Affairs.”;

20 (2) in section 5313, by inserting “Deputy Sec-
21 retary of Homeland Security.” as a new item after
22 “Affairs.”;

23 (3) in section 5314, by inserting “Under Secre-
24 taries, Department of Homeland Security.” as a new
25 item after “Affairs.” the third place it appears;



1 (4) in section 5315, by inserting “Assistant
2 Secretaries, Department of Homeland Security.”,
3 “General Counsel, Department of Homeland Secu-
4 rity.”, “Chief Financial Officer, Department of
5 Homeland Security.”, “Chief Information Officer,
6 Department of Homeland Security.”, and “Inspector
7 General, Department of Homeland Security.” as new
8 items after “Affairs.” the first place it appears; and

9 (5) in section 5315, by striking “Commissioner
10 of Immigration and Naturalization, Department of
11 Justice.”.

12 (b) SPECIAL EFFECTIVE DATE.—Notwithstanding
13 section 4, the amendment made by subsection (a)(5) shall
14 take effect on the date on which the transfer of functions
15 specified under section 411 takes effect.

16 **SEC. 903. UNITED STATES SECRET SERVICE.**

17 (a) IN GENERAL.—The United States Code is
18 amended in sections 202 and 208 of title 3, and in section
19 3056 of title 18, by striking “of the Treasury”, each place
20 it appears and inserting “of Homeland Security”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of transfer of
23 the United States Secret Service to the Department.



1 **SEC. 904. COAST GUARD.**

2 (a) TITLE 14, U.S.C.—Title 14, United States Code,
3 is amended in sections 1, 3, 53, 95, 145, 516, 666, 669,
4 673, 673a, 674, 687, and 688 by striking “of Transpor-
5 tation” each place it appears and inserting “of Homeland
6 Security”.

7 (b) TITLE 10, U.S.C.—(1) Title 10, United States
8 Code, is amended in sections 101(9), 130b(a), 130b(c)(4),
9 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e),
10 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e),
11 888,946(c)(1), 973(d), 978(d), 983(b)(1), 985(a),
12 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c),
13 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2),
14 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e),
15 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175,
16 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b),
17 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a),
18 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1),
19 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e),
20 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836,
21 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a),
22 10147(a), 10149(b), 10150, 10202(b), 10203(d),
23 10205(b), 10301(b), 12103(b), 12103(d), 12304,
24 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731(a)(e),
25 16131(a), 16136(a), 16301(g), and 18501 by striking “of



1 Transportation” each place it appears and inserting “of
2 Homeland Security”.

3 (2) Section 801(1) of such title is amended by strik-
4 ing “the General Counsel of the Department of Transpor-
5 tation” and inserting “an official designated to serve as
6 Judge Advocate General of the Coast Guard by the Sec-
7 retary of Homeland Security”.

8 (3) Section 983(d)(2)(B) of such title is amended by
9 striking “Department of Transportation” and inserting
10 “Department of Homeland Security”.

11 (4) Section 2665(b) of such title is amended by strik-
12 ing “Department of Transportation” and inserting “De-
13 partment in which the Coast Guard is operating”.

14 (5) Section 7045 of such title is amended—

15 (A) in subsections (a)(1) and (b), by striking
16 “Secretaries of the Army, Air Force, and Transpor-
17 tation” both places it appears and inserting “Sec-
18 retary of the Army, the Secretary of the Air Force,
19 and the Secretary of Homeland Security”; and

20 (B) in subsection (b), by striking “Department
21 of Transportation” and inserting “Department of
22 Homeland Security”.

23 (6) Section 7361(b) of such title is amended in the
24 subsection heading by striking “TRANSPORTATION” and
25 inserting “HOMELAND SECURITY”.



1 (7) Section 12522(b) of such title is amended in the
2 subsection heading by striking “TRANSPORTATION” and
3 inserting “HOMELAND SECURITY”.

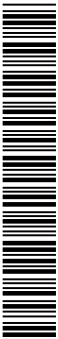
4 (c) TITLE 37, U.S.C.—Title 37, United States Code,
5 is amended in sections 101(5), 204(i)(4), 301a(a)(3),
6 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e),
7 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e),
8 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d),
9 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1),
10 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a),
11 and 1011(d) by striking “of Transportation” each place
12 it appears and inserting “of Homeland Security”.

13 (d) OTHER DEFENSE-RELATED LAWS.—(1) Section
14 363 of Public Law 104–193 (110 Stat. 2247) is
15 amended—

16 (A) in subsection (a)(1) (10 U.S.C. 113 note),
17 by striking “of Transportation” and inserting “of
18 Homeland Security”; and

19 (B) in subsection (b)(1) (10 U.S.C. 704 note),
20 by striking “of Transportation” and inserting “of
21 Homeland Security”.

22 (2) Section 721(1) of Public Law 104–201 (10
23 U.S.C. 1073 note) is amended by striking “of Transpor-
24 tation” and inserting “of Homeland Security”.



1 (3) Section 4463(a) of Public Law 102–484 (10
2 U.S.C. 1143a note) is amended by striking “after con-
3 sultation with the Secretary of Transportation”.

4 (4) Section 4466(h) of Public Law 102–484 (10
5 U.S.C. 1143 note) is amended by striking “of Transpor-
6 tation” and inserting “of Homeland Security”.

7 (5) Section 542(d) of Public Law 103–337 (10
8 U.S.C. 1293 note) is amended by striking “of Transpor-
9 tation” and inserting “of Homeland Security”.

10 (6) Section 740 of Public Law 106–181 (10 U.S.C.
11 2576 note) is amended in subsections (b)(2), (c), and
12 (d)(1) by striking “of Transportation” each place it ap-
13 pears and inserting “of Homeland Security”.

14 (7) Section 1407(b)(2) of the Defense Dependents’
15 Education Act of 1978 (20 U.S.C. 926(b)) is amended by
16 striking “of Transportation” both places it appears and
17 inserting “of Homeland Security”.

18 (8) Section 2301(5)(D) of Public Law 107–110 (20
19 U.S.C. 6671(5)(D)) is amended by striking “of Transpor-
20 tation” and inserting “of Homeland Security”.

21 (9) Section 2307(a) of Public Law 107–110 (20
22 U.S.C. 6677(a)) is amended by striking “of Transpor-
23 tation” and inserting “of Homeland Security”.



1 (10) Section 1034(a) of Public Law 105–85 (21
2 U.S.C. 1505a(a)) is amended by striking “of Transpor-
3 tation” and inserting “of Homeland Security”.

4 (11) The Military Selective Service Act is amended—

5 (A) in section 4(a) (50 U.S.C. App. 454(a)), by
6 striking “of Transportation” in the fourth para-
7 graph and inserting “of Homeland Security”;

8 (B) in section 4(b) (50 U.S.C. App. 454(b)), by
9 striking “of Transportation” both places it appears
10 and inserting “of Homeland Security”;

11 (C) in section 6(d)(1) (50 U.S.C. App.
12 456(d)(1)), by striking “of Transportation” both
13 places it appears and inserting “of Homeland Secu-
14 rity”;

15 (D) in section 9(c) (50 U.S.C. App. 459(c)), by
16 striking “Secretaries of Army, Navy, Air Force, or
17 Transportation” and inserting “Secretary of a mili-
18 tary department, and the Secretary of Homeland Se-
19 curity with respect to the Coast Guard,”; and

20 (E) in section 15(e) (50 U.S.C. App. 465(e)),
21 by striking “of Transportation” both places it ap-
22 pears and inserting “of Homeland Security”.

23 (e) TECHNICAL CORRECTION.—(1) Title 14, United
24 States Code, is amended by redesignating section 673 (as



1 added by section 309 of Public Law 104–324) as section
2 673a.

3 (2) The table of sections at the beginning of chapter
4 17 of such title is amended by redesignating the item re-
5 lating to such section as section 673a.

6 (f) EFFECTIVE DATE.—The amendments made by
7 this section (other than subsection (e)) shall take effect
8 on the date of transfer of the Coast Guard to the Depart-
9 ment.

10 **SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALL-**
11 **POX VACCINE DEVELOPMENT.**

12 (a) IN GENERAL.—The Public Health Security and
13 Bioterrorism Preparedness and Response Act of 2002 is
14 amended—

15 (1) in section 121(a)(1)—

16 (A) by striking “Secretary of Health and
17 Human Services” and inserting “Secretary of
18 Homeland Security”;

19 (B) by inserting “the Secretary of Health
20 and Human Services and” between “in coordi-
21 nation with” and “the Secretary of Veterans
22 Affairs”; and

23 (C) by inserting “of Health and Human
24 Services” after “as are determined by the Sec-
25 retary”; and



1 (2) in subsections 121(a)(2) and (b), by insert-
2 ing “of Health and Human Services” after “Sec-
3 retary” each place it appears.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of transfer of
6 the Strategic National Stockpile of the Department of
7 Health and Human Services to the Department.

8 **SEC. 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC**
9 **HEALTH SERVICE ACT.**

10 (a) PUBLIC HEALTH SERVICE ACT.—The Public
11 Health Service Act is amended—

12 (1) in section 351A(a)(1)(A), by inserting “(as
13 defined in subsection (l)(9))” after “Secretary”;

14 (2) in section 351A(h)(2)(A), by inserting “De-
15 partment of Homeland Security, the” before “De-
16 partment of Health and Human Services”; and

17 (3) in section 351A(l), by inserting after para-
18 graph (8) a new paragraph as follows:

19 “(9) The term ‘Secretary’ means the Secretary
20 of Homeland Security, in consultation with the Sec-
21 retary of Health and Human Services.”.

22 (b) PUBLIC HEALTH SECURITY AND BIOTERRORISM
23 PREPAREDNESS AND RESPONSE ACT OF 2002.—Section
24 201(b) of the Public Health Security and Bioterrorism
25 Preparedness and Response Act of 2002 is amended by



1 striking “Secretary of Health and Human Services” and
2 inserting “Secretary of Homeland Security”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of transfer of
5 the select agent registration enforcement programs and
6 activities of the Department of Health and Human Serv-
7 ices to the Department.

8 **SEC. 907. TRANSFER OF CERTAIN SECURITY AND LAW EN-**
9 **FORCEMENT FUNCTIONS AND AUTHORITIES.**

10 (a) AMENDMENT TO PROPERTY ACT.—Section
11 210(a)(2) of the Federal Property and Administrative
12 Services Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.

13 (b) LAW ENFORCEMENT AUTHORITY.—The Act of
14 June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat.
15 281) is amended to read as follows:

16 **“SECTION 1. SHORT TITLE.**

17 “This Act may be cited as the ‘Protection of Public
18 Property Act’.

19 **“SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY**
20 **OF HOMELAND SECURITY FOR PROTECTION**
21 **OF PUBLIC PROPERTY.**

22 “(a) IN GENERAL.—The Secretary of Homeland Se-
23 curity (in this Act referred to as the “Secretary”) shall
24 protect the buildings, grounds, and property that are
25 owned, occupied, or secured by the Federal Government



1 (including any agency, instrumentality, or wholly owned
2 or mixed-ownership corporation thereof) and the persons
3 on the property.

4 “(b) OFFICERS AND AGENTS.—

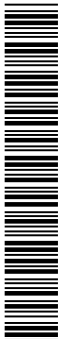
5 “(1) DESIGNATION.—The Secretary may des-
6 ignate employees of the Department of Homeland
7 Security, including employees transferred to the De-
8 partment from the Office of the Federal Protective
9 Service of the General Services Administration pur-
10 suant to the Homeland Security Act of 2002, as offi-
11 cers and agents for duty in connection with the pro-
12 tection of property owned or occupied by the Federal
13 Government and persons on the property, including
14 duty in areas outside the property to the extent nec-
15 essary to protect the property and persons on the
16 property.

17 “(2) POWERS.—While engaged in the perform-
18 ance of official duties, an officer or agent designated
19 under this subsection may—

20 “(A) enforce Federal laws and regulations
21 for the protection of persons and property;

22 “(B) carry firearms;

23 “(C) make arrests without a warrant for
24 any offense against the United States com-
25 mitted in the presence of the officer or agent or



1 for any felony cognizable under the laws of the
2 United States if the officer or agent has reason-
3 able grounds to believe that the person to be ar-
4 rested has committed or is committing a felony;

5 “(D) serve warrants and subpoenas issued
6 under the authority of the United States; and

7 “(E) conduct investigations, on and off the
8 property in question, of offenses that may have
9 been committed against property owned or oc-
10 cupied by the Federal Government or persons
11 on the property.

12 “(F) carry out such other activities for the
13 promotion of homeland security as the Sec-
14 retary may prescribe.

15 “(c) REGULATIONS.—

16 “(1) IN GENERAL.—The Secretary, in consulta-
17 tion with the Administrator of General Services, may
18 prescribe regulations necessary for the protection
19 and administration of property owned or occupied by
20 the Federal Government and persons on the prop-
21 erty. The regulations may include reasonable pen-
22 alties, within the limits prescribed in paragraph (2),
23 for violations of the regulations. The regulations
24 shall be posted and remain posted in a conspicuous
25 place on the property.



1 “(2) PENALTIES.—A person violating a regula-
2 tion prescribed under this subsection shall be fined
3 under title 18, United States Code, imprisoned for
4 not more than 30 days, or both.

5 “(d) DETAILS.—

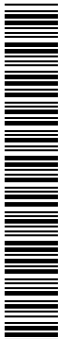
6 “(1) REQUESTS OF AGENCIES.—On the request
7 of the head of a Federal agency having charge or
8 control of property owned or occupied by the Federal
9 Government, the Secretary may detail officers and
10 agents designated under this section for the protec-
11 tion of the property and persons on the property.

12 “(2) APPLICABILITY OF REGULATIONS.—The
13 Secretary may—

14 “(A) extend to property referred to in
15 paragraph (1) the applicability of regulations
16 prescribed under this section and enforce the
17 regulations as provided in this section; or

18 “(B) utilize the authority and regulations
19 of the requesting agency if agreed to in writing
20 by the agencies.

21 “(3) FACILITIES AND SERVICES OF OTHER
22 AGENCIES.—When the Secretary determines it to be
23 economical and in the public interest, the Secretary
24 may utilize the facilities and services of Federal,



1 State, and local law enforcement agencies, with the
2 consent of the agencies.

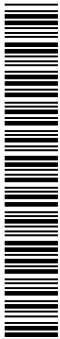
3 “(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—
4 For the protection of property owned or occupied by the
5 Federal Government and persons on the property, the Sec-
6 retary may enter into agreements with Federal agencies
7 and with State and local governments to obtain authority
8 for officers and agents designated under this section to
9 enforce Federal laws and State and local laws concurrently
10 with other Federal law enforcement officers and with
11 State and local law enforcement officers.

12 “(f) SECRETARY AND ATTORNEY GENERAL AP-
13 PROVAL.—The powers granted to officers and agents des-
14 ignated under this section shall be exercised in accordance
15 with guidelines approved by the Secretary and the Attor-
16 ney General.

17 “(g) LIMITATION ON STATUTORY CONSTRUCTION.—
18 Nothing in this section shall be construed to—

19 “(1) preclude or limit the authority of any Fed-
20 eral law enforcement agency; or

21 “(2) restrict the authority of the Administrator
22 of General Services to promulgate regulations affect-
23 ing property under the Administrator’s custody and
24 control.”.



1 **SEC. 908. TRANSPORTATION SECURITY REGULATIONS.**

2 Title 49, United States Code, is amended—

3 (1) in section 114(l)(2)(B), by inserting “for a
4 period not to exceed 30 days” after “effective”; and

5 (2) in section 114(l)(2)(B), by inserting “rati-
6 fied or” after “unless”.

7 **SEC. 909. RAILROAD SECURITY LAWS.**

8 Title 49, United States Code, is amended—

9 (1) in section 20106 by inserting in the second
10 sentence, “, including security,” after “railroad safe-
11 ty” and “or the Secretary of Homeland Security”
12 after “Secretary of Transportation”; and

13 (2) in section 20105—

14 (A) by inserting “or the Secretary of
15 Homeland Security” after “Secretary of Trans-
16 portation” in subsection (a);

17 (B) by inserting “of Transportation or the
18 Secretary of Homeland Security” after “issued
19 by the Secretary” in subsection (a);

20 (C) by inserting “of Transportation or the
21 Secretary of Homeland Security, as appro-
22 priate,” after “to the Secretary” in subsection
23 (a), and after “Secretary” in subsection
24 (b)(1)(A)(iii) and (B)(iv), the first place it ap-
25 pears in subsections (b)(1)(B) and (B)(iii) and
26 (d), each place it appears in subsections (c)(1),



1 (c)(2), (e), and (f), and the first four times it
2 appears in subsection (b)(3);

3 (D) by inserting “of Transportation or the
4 Secretary of Homeland Security, as appropriate” after “Secretary” in subsection
5 (b)(1)(A)(ii), (b)(1)(B)(ii), the second place it
6 appears in subsection (b)(1)(B)(iii), and the
7 last place it appears in subsection (b)(3);

8 (E) in subsection (d), by replacing “Secretary’s” with “Secretary of Transportation’s”
9 and adding before the period at the end “or the
10 Secretary of Homeland Security’s duties under
11 section 114”; and

12 (F) in subsection (f), by adding before the
13 period at the end “or section 114”.

14 **SEC. 910. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

15 The National Science and Technology Policy, Organi-
16 zation, and Priorities Act is amended—

17 (1) in section 204(b)(1) (42 U.S.C.
18 6613(b)(1)), by inserting “homeland security,” after
19 “national security,”; and

20 (2) in section 208(a)(1) (42 U.S.C.
21 6617(a)(1)), by inserting “the Office of Homeland
22 Security,” after “National Security Council,”.



1 **SEC. 911. NATIONAL OCEANOGRAPHIC PARTNERSHIP PRO-**
2 **GRAM.**

3 Section 7902 (b) of title 10, United States Code, is
4 amended by adding at the end the following new para-
5 graphs:

6 “(13) The Under Secretary for Science and
7 Technology of the Department of Homeland Secu-
8 rity.

9 “(14) Other Federal officials the Council con-
10 siders appropriate.”.

11 **SEC. 912. CHIEF FINANCIAL OFFICER.**

12 Section 901(b)(1) of title 31, United States Code, is
13 amended—

14 (1) by redesignating subparagraphs (G)
15 through (P) as subparagraphs (H) through (Q), re-
16 spectively; and

17 (2) by inserting the following new subparagraph
18 after subparagraph (F):

19 “(G) The Department of Homeland Secu-
20 rity.”.

21 **SEC. 913. CHIEF INFORMATION OFFICER.**

22 (a) CLINGER–COHEN ACT.—(1) The provisions en-
23 acted in section 5125 of the Clinger–Cohen Act of 1996
24 (division E of Public Law 104–106; 110 Stat. 684) shall
25 apply with respect to the Chief Information Officer of the
26 Department.



1 (2) Section 5131(c) of the Clinger-Cohen Act of 1996
2 (40 U.S.C. 1441(c)) is amended by inserting “or ap-
3 pointed” after “the Chief Information Officer designated”.

4 (b) TITLE 44.—Chapter 35 of title 44, United States
5 Code, is amended—

6 (1) in section 3506(a)(2)—

7 (A) in subparagraph (A) by striking “sub-
8 paragraph (B)” and inserting “subparagraphs
9 (B) and (C)”; and

10 (B) by adding at the end the following:

11 “(C) The Chief Information Officer of the Depart-
12 ment of Homeland Security shall be an individual who is
13 appointed by the President.”;

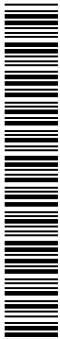
14 (2) in each of subsections (a)(3), (a)(4), and
15 (c)(1) of section 3506 by inserting “or appointed”
16 after “the Chief Information Officer designated”;
17 and

18 (3) in section 3507(i) by inserting “or ap-
19 pointed” after “the Chief Information Officer des-
20 ignated”.

21 **TITLE X—NATIONAL HOMELAND**
22 **SECURITY COUNCIL**

23 **SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.**

24 There is established within the Executive Office of
25 the President a council to be known as the “Homeland



1 Security Council” (in this title referred to as the “Coun-
2 cil”).

3 **SEC. 1002. FUNCTION.**

4 The function of the Council shall be to advise the
5 President on homeland security matters.

6 **SEC. 1003. MEMBERSHIP.**

7 The members of the Council shall be the following:

8 (1) The President.

9 (2) The Vice President.

10 (3) The Secretary of Homeland Security.

11 (4) The Attorney General.

12 (5) The Secretary of Health and Human Serv-
13 ices.

14 (6) The Director of Central Intelligence.

15 (7) The Secretary of Defense.

16 (8) The Secretary of the Treasury.

17 (9) The Secretary of State.

18 (10) The Secretary of Energy.

19 (11) The Secretary of Agriculture.

20 (12) Such other individuals as may be des-
21 ignated by the President.

22 **SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.**

23 For the purpose of more effectively coordinating the
24 policies and functions of the United States Government
25 relating to homeland security, the Council shall—



1 (1) assess the objectives, commitments, and
2 risks of the United States in the interest of home-
3 land security and to make resulting recommenda-
4 tions to the President;

5 (2) oversee and review homeland security poli-
6 cies of the Federal Government and to make result-
7 ing recommendations to the President; and

8 (3) perform such other functions as the Presi-
9 dent may direct.

10 **SEC. 1005. HOMELAND SECURITY BUDGET.**

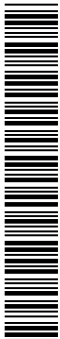
11 The Director of the Office of Management and Budg-
12 et shall prepare for the President a Federal homeland se-
13 curity budget to be delivered to the Congress as part of
14 the President's annual budget request.

15 **SEC. 1006. STAFF COMPOSITION.**

16 The Council shall have a staff, the head of which shall
17 be a civilian Executive Secretary, who shall be appointed
18 by the President. The President is authorized to fix the
19 pay of the Executive Secretary at a rate not to exceed
20 the rate of pay payable to the Executive Secretary of the
21 National Security Council.

22 **SEC. 1007. RELATION TO THE NATIONAL SECURITY COUN-**
23 **CIL.**

24 The President may convene joint meetings of the
25 Homeland Security Council and the National Security



- 1 Council with participation by members of either Council
- 2 or as the President may otherwise direct.

